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## REGULATORY IMPACT ASSESSMENT

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### IMPLEMENTATION OF THE EUROPEAN DIRECTIVE ON THE DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES

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**B.1** In a consultation document<sup>1</sup> published in July 2003, the Government set out proposals for implementing European Directive 2002/65/EC<sup>2</sup> concerning the Distance Marketing of Consumer Financial Services ('the Directive'). This Regulatory Impact Assessment (RIA) deals with the revised proposals, which take into account responses to that consultation.

#### Purpose and Intended Effect

**Objective B.2** The objective is to implement in the UK the Directive that was adopted by the European Parliament and Council on 23rd September 2002. Member States were given two years to transpose the Directive into national laws. The Government intends to implement the Directive in the most cost effective and proportionate way.

**B.3** The Directive is important in achieving the aims of the Single Market. It will provide opportunities for UK business and greater protections for UK consumers that transact financial services at a distance. The implementing regulations, known as the Financial Services (Distance Marketing) Regulations 2004, will apply to the whole of the UK.

**B.4** The Directive covers contracts for financial services made between suppliers and consumers. Business to business contracts for financial services are not covered. A distance contract is one concluded under an organised distance sales or service-provision scheme run by the supplier or someone acting on the supplier's behalf who, for the purposes of that contract, makes exclusive use of one or more means of distance communication up to and including the moment that the contract is concluded.

### BACKGROUND

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#### Consumer Protection (Distance Selling) Regulations 2000

**B.5** There is already well established general regulation of distance selling of goods and services in the UK. The Consumer Protection (Distance Selling) Regulations 2000 ('the DSRs') implement European Directive 97/7/EC<sup>3</sup> for the distance selling of all non-financial goods and services. The aim of the DSRs is to ensure that consumers are appropriately protected taking into account the special characteristics of making a transaction when the consumer and the supplier are not face-to-face.

**B.6** The DSRs lay down the main rules applicable to distance contracts for goods or services concluded between a supplier and a consumer.

**B.7** The complexity of financial services transactions led the European Commission to deal with the distance marketing of financial services in a separate Directive.

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<sup>1</sup> HM Treasury, July 2003 – Implementation of the Distance Marketing of Consumer Financial Services Directive

<sup>2</sup> Official Journal of the European Communities, L271, 9.10.2002, p.16

<sup>3</sup> Directive 97/7/EC on the protection of consumers in respect of distance contracts, Official Journal of the European Communities, L 144, 4.6.1997, p. 19.

## European Directive 2002/65/EC on the distance marketing of consumer financial services ('the Directive')

**B.8** The Directive sets common minimum standards for the information that must be supplied to consumers of financial services prior to a contract being concluded where the supplier makes exclusive use of one or more means of distance communication (e.g. telephone, internet, fax or mail) under an organised distance sales or service-provision scheme run by the supplier or someone acting on the supplier's behalf. There are also provisions for rights of withdrawal ("cancellation rights") in many circumstances.

**B.9** The Directive applies to "any service of a banking, credit, insurance, personal pension, investment or payment nature". Many firms will already be familiar with disclosure requirements and cancellation rights under their existing regulatory arrangements such as under the Financial Services and Markets Act 2000 (FSMA).

**B.10** The Government supports the objective of the Directive and believes that the information requirements it sets out will help consumers to make sound judgments about financial services.

### Approach to Implementation

**B.11** In the consultation document published in July 2003 the Government set out its proposals for implementing the Directive. A key issue was whether the Directive should be implemented on a country of origin or host State basis. Most respondents to the consultation favoured the country of origin approach, as the most efficient and practical way of implementing the Directive. The Government shares this view, considers that this is how the Directive should be interpreted, and will implement the Directive on this basis. The Directive contains a transitional provision (Article 16) that allows Member States to implement the provisions of the Directive on a host State basis when its consumers are targeted by suppliers of another Member State that has not yet transposed the Directive.

**B.12** The Government consulted on two possible approaches to implementing the Directive:

- Approach One: to use the European Communities Act 1972 (EC Act) to make a set of regulations that would apply to all financial services covered by the Directive.
  - Under this approach, there would be a set of overarching requirements giving effect in domestic law to the requirements of the Directive, adherence to which would be necessary for financial services firms to comply with the Directive.
- Approach Two: to implement the Directive by incorporating its requirements into the rules or other requirements of competent regulatory authorities where possible, and to legislate using the EC Act for those financial services falling within the scope of the Directive but not covered by other existing regimes, such as that under FSMA, for the current purpose referred to as "gap" financial services.
  - Under approach two, the Financial Services Authority (FSA), for example, would integrate the provisions of the Directive into its rules for firms authorised under FSMA. The Department for Trade and Industry (DTI)/Office of Fair Trading (OFT) and Trading Standards Departments

would be responsible for enforcing the provisions of the Directive in respect of activities falling within the ambit of the CCA. The EC Act would only be relied upon to legislate for "gap" financial services, as referred to above.

**B.13** Respondents to the consultation shared the Government's preference for Approach Two. The Government will therefore implement the Directive in line with Approach Two, using existing regulatory mechanisms where possible, and relying upon the EC Act to legislate for "gap" financial services. Additionally, it has been decided that the implementing regulations, the Financial Services (Distance Marketing) Regulations 2004, should cover distance contracts for consumer credit; on further consideration it was realised that to do otherwise would have resulted in two sets of nearly identical regulations.

**Timing B.14** The consultation document also explained the different implementation dates likely to apply for the Directive, Directive 2002/92/EC<sup>4</sup> on Insurance Mediation ("the IMD") and FSA regulation of mortgages. The Directive is due to be implemented by 9th October 2004 (Article 21 of the Directive).

**B.15** Respondents to the consultation raised concerns about the mismatch of dates for implementing the Directive, the IMD and FSA regulation of mortgages. On the basis of the options presented in the consultation, most respondents agreed with the Government view of making the FSA the competent enforcement authority responsible for enforcing the Directive in the interim period between when the Directive comes into effect and the implementation date of the IMD and FSA regulation of mortgages. However, the Government has decided that the Directive should commence at the same time as the FSA becomes responsible for regulation of mortgages, 31st October 2004. This allows industry sufficient time to co-ordinate the system changes required for both mortgage regulation and the Financial Services (Distance Marketing) Regulations 2004.

## Overall risk assessment

**B.16** Failure to implement the Directive would make the UK liable to infraction proceedings by the European Commission. The UK Government could also be subject to legal action from consumers who suffer detriment from the UK's failure to implement the Directive.

**B.17** The absence of common disclosure and withdrawal rights across Member States can lead to inconsistencies of information provided to consumers which might lead to confusion, mis-selling and harm to consumer confidence.

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<sup>4</sup> Official Journal of the European Communities, L9, 15.01.2003, p.3.

**B.18** Between 1st October 2002 and 5th November 2002, the European Opinion Research Group carried out a Eurobarometer<sup>5</sup> Opinion Poll to assess views on various aspects of financial services. Of most relevance to the Directive are the findings on cross-border financial services. A summary of findings is in Appendix A.

**B.19** The survey showed that the market for cross-border trade in financial services is small. For example, less than 5% of UK respondents have ever obtained a bank account from another EU country and similar results for other types of financial services is shown in Table 1 of Appendix A.

**B.20** The results also show that a higher proportion of UK respondents would consider obtaining financial services from another EU country in the next five years (Table 2 of Appendix A).

**B.21** The survey does not show whether there is a preference for obtaining financial services via electronic means e.g. the Internet or telephone. However, it is likely that those respondents who obtained these financial services from other EU countries may have relied upon distance marketing means to do so. The limited number of transactions unsurprisingly gives rise to little evidence of consumer complaints in this market.

**B.22** The survey suggests that the benefit of implementing the Directive to consumers may be marginal, as distance marketing activity and cross-border trade in financial services are low at present. However, the Government believes implementation of the Directive's requirements, which will be harmonised with other EU countries, will allow for potential growth and innovation in this market. This is as beneficial as correcting market failure/setting rules after the market has emerged and is functioning.

**B.23** Implementation of the Directive creates an environment of certainty of distance marketing law for businesses, and of protections for consumers, in the EU market. This will help foster activity in cross-border trade in financial services.

**B.24** The Eurobarometer survey also shows that a high proportion (57%<sup>6</sup>) of UK respondents felt that there should be total or part harmonisation of consumer protection standards in the EU market; the EU15 average is higher at 70%<sup>7</sup> (Table 4 of Appendix A).

**B.25** The Government aims to implement the Directive in the most cost effective way in terms of enforcement approach, to bring benefits to firms and consumers. This is in line with the Government's approach to the Financial Services Action Plan<sup>8</sup>, having due regard to alternative approaches to introducing legislation, and, where this is not possible to introduce legislation based on better regulation principles, including a proper assessment of the costs and benefits.

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<sup>5</sup> European Public opinion: Views on Financial Services, autumn 2002.

[[http://europa.eu.int/comm/consumers/cons\\_int/fina\\_serv/cons\\_experiences/euro58\\_repb\\_en.pdf](http://europa.eu.int/comm/consumers/cons_int/fina_serv/cons_experiences/euro58_repb_en.pdf)]

Eurobarometer 58.1 covers the population of the respective nationalities of the European Union Member States (15 in 2002), aged 15 years and over, resident in each of the Member States. The basic sample design applied in all Member States is a multistage, random (probability) one. In each EU country, a number of sampling points was drawn with probability proportional to population size (for total coverage of the country) and to population density.

<sup>6</sup> This is calculated by adding the percentage responses to "Yes, totally" and "Yes, in part" for the UK, Appendix A table 3.

<sup>7</sup> This is calculated by adding the percentage responses to "Yes, totally" and "Yes, in part" for the EU15, Appendix A table 3.

<sup>8</sup> HM Treasury, May 2004 – The EU Financial Services Action Plan: Delivering the FSAP in the UK.

## Options for implementing the Directive

**B.26** The Government considered three options for implementing the Directive in the consultation document. In summary these were:

- Option 1 - Do nothing.
- Option 2 - To use the EC Act to implement the Directive and make a set of regulations that would apply to all financial services within the scope of the Directive.
- Option 3 - To incorporate the relevant requirements of the Directive into the rules or other requirements of the competent enforcement authorities under relevant existing regulatory framework (mainly FSMA and CCA). The EC Act would be used to implement the Directive's requirements for those financial services which fall in the "gap". This option has subsequently been revised to cover consumer credit within the same set of regulations as "gap" services, which will be known as the Financial Services (Distance Marketing) Regulations 2004.

## Risks of each option

**B.27** The risks of each option are as follows:

- Option 1 - Do nothing.

**B.28** This option is not genuinely available, as once passed, EC Directives are binding on Member States. Failure by the UK to implement the Directive could lead to infraction proceedings taken against the UK by the European Commission. Also individual consumers could take legal action against the UK Government for failing to provide consumers with the protections they are entitled to under the Directive.

- Option 2 - To use the powers of the EC Act to make regulations covering all distance contracts concerning financial services.

**B.29** This option would create a set of overarching requirements giving effect in domestic law to the requirements of the Directive, adherence to which would be necessary for firms to comply with the Directive. Respondents highlighted that this option could give rise to uncertainty for existing financial services firms should mismatches occur between the regulations and existing FSA rules. Other issues arising under this approach include questions about the precise enforcement mechanism to be applied.

- Option 3 - To incorporate the Directive's requirements into the rules or other requirements of relevant competent enforcement authorities under the existing legislation where possible (mainly FSMA).

**B.30** The FSA would integrate the Directive's requirements into its rules for firms authorised under FSMA. The DTI would ensure that the relevant provisions of the Directive are similarly given effect for consumer credit by consumer credit laws. Under this option the EC Act regulations would be used to legislate where a financial service falling within the scope of the Directive was not caught by an existing regulatory mechanism, i.e. the "gap" financial services.

**B.31** The risk of this option is that different domestic provisions giving effect to the same provision of the Directive might be inconsistently interpreted. This could give rise to different enforcement and supervision styles for regulated services that fall, for example, under FSMA and those financial services falling within the “gap”. However, this risk could be managed by good co-operation between enforcement authorities and ensuring that the enforcement authorities provide consistent guidance for firms subject to different domestic regimes.

## Benefits

**B.32** The intangible nature of financial services makes them particularly suited to distance marketing, for example, over the Internet, by telephone, fax or mail. This has benefits for businesses and consumers alike. For business, the advantages include harnessing modern technology and innovative marketing to access consumers without the attendant costs of having face-to-face dealings. For consumers, it means access to a wider range of financial services than might be easily available through face-to-face contact, thus increasing their ability to shop around. But consumers also require protection to ensure that they are not misled into buying products on the basis of inadequate information. The establishment of a legal framework should increase consumer confidence in the use of distance means, such as electronic commerce.

**Consumers B.33** At present, each Member State has national rules and redress systems for distance marketing of financial services. The definitions of distance marketing and what type of financial services are covered, as well as the content of the substantive rules, can vary between Member States. National redress systems and procedures also vary. Consumers buying financial services from several different EU countries may face different sets of distance marketing laws. Consumers will have to know and understand these national laws in order to exercise their rights, for example, when things go wrong.

**B.34** The benefit to consumers of implementing the Directive is therefore a common set of rights or minimum standards regardless of where in the EU they shop. UK distance marketing of financial services law will give consumers broadly the same protections as consumers in other EU countries. As part of the disclosure requirements of the Directive, suppliers in the EU will be required to supply to consumers information on complaint handling, redress and compensation mechanisms.

**B.35** The Directive also addresses some of the issues such as information provisions and consumer protection, identified by the Eurobarometer survey as obstacles to cross-border trade in financial services. This will increase consumer confidence in shopping for financial services across the Single Market.

**B.36** The Eurobarometer survey, Table 3 of Appendix A, shows that while 48% of UK respondents do not feel there are obstacles to cross-border trade in financial services, the EU15 average is much lower (24%). Of the potential obstacles, lack of information is cited most frequently by UK respondents (19%). For the EU as a whole this figure is 30%. Inadequate information and the absence of protection when things go wrong are also cited by respondents in the EU15, 12% and 18% respectively; while less UK respondents cited these reasons, 2% and 7% respectively.

**B.37** The Directive seeks to address these inconsistencies and aims to set common minimum standards for provision of information for all Member States for the distance marketing of financial services. The Directive's disclosure requirements include providing details of:

- the supplier;
- the financial service, including a description of the main characteristics of the financial service and the total price to be paid;
- the distance contract; including information on the right of withdrawal (if applicable), any rights the parties have to terminate the contract early, any contractual clause relating to the law applicable to the contract; and
- redress; any out of court complaints and redress arrangement and any compensation arrangements other than those covered by the Deposit Guarantee and Investor Compensation Directives<sup>9</sup>.

**B.38** Article 6 of the Directive sets out the consumer's rights of withdrawal from certain distance contracts. These rights include a 30 day withdrawal period for life insurance and personal pensions and a 14 day period for other contracts (although there are some exceptions from this).

**B.39** For UK consumers, the Directive will result in increased cancellation rights. The Directive requires suppliers to offer cancellation rights in some circumstances where they are currently not required or offered, and to give a longer cancellation period in some circumstances than UK law currently requires.

**B.40** Under the CCA, where there have been antecedent negotiations including oral representations made in the presence of the debtor, the borrower may cancel the agreement by sending notice of cancellation before the end of a period of (usually) five days following the day on which he received a copy of the executed agreement or (in certain cases) 14 days from the time the borrower signs the agreement. These rights to cancel does not apply to any agreements concluded on the trade premises of the supplier. Implementation of the Directive will mean that consumers have a right to withdraw from any distance contract for a period of at least 14 days beginning on the day after that on which the contract was concluded.

**B.41** Financial services that are termed "gap" financial services for the purpose of this RIA will also have to comply with the requirements of the Directive. Examples of such "gap" financial services include breakdown insurance and travel insurance booked with travel providers. Consumers of the "gap" financial services will be able to complain to a nominated enforcement authority for the purposes of the Directive.

**Firms B.42** Implementing the Directive means businesses will be subject to similar distance marketing regulation irrespective of which Member State the business is based in and what national rules and procedures are in place. As a result, it is expected businesses will be more proactive in conducting business across Member State borders. In the long-term, the introduction of common minimum standards on prior information and common cancellation rights should increase consumer confidence in distance sales and result in more consumers using distance means. This in turn could encourage suppliers to expand the range of products marketed via distance means. New providers would also be expected to join the market, increasing competition.

<sup>9</sup> Directive 94/19/EC on deposit guarantee schemes (Official Journal of the European Communities L 135, 31.5.1994, p.5) and Directive 97/9/EC on investor compensation schemes (Official Journal of the European Communities L 84, 26.3.1997, p.22) respectively.

**B.43** The benefits of each option are as follows:

- Option 1 – Do nothing.

**B.44** There are no benefits to UK consumers if the Directive is not implemented. For UK businesses the benefit would be fewer legislative requirements to comply with.

- Option 2 - Implement the Directive solely using the EC Act.

**B.45** The benefits of implementing the DMD are for firms and consumers conducting financial transactions at a distance across Member States borders as mentioned above.

- Option 3 - Where possible, incorporate the Directive's requirements into the rules or other requirements of relevant competent enforcement authorities under the existing legislation (mainly FSMA) for the areas they are responsible. For "gap" financial services use the EC Act to implement the Directive and make provision for consumer credit.

**B.46** This option would realise all the benefits mentioned above for firms and consumers. It would be an effective approach to implementing the Directive using a mixture of new and existing regulations and enforcement authorities (FSA, DTI, OFT and Trading Standards Departments). In terms of enforcement the FSA will be able to deploy its full range of remedies. The Directive will simply extend rather than change the current regulatory architecture, so that firms currently regulated by the FSA would continue to be regulated by the FSA, and those currently regulated by OFT would continue to be regulated by the OFT. Firms regulated by the FSA will not have to look at both the Financial Services (Distance Marketing) Regulations 2004 and the FSA Handbook. Most provisions relevant to them will be contained within the FSA Handbook. This approach makes good use of existing relationships between enforcement authorities and authorised firms. Consumers will be able to complain to a specific enforcement body if the Directive's protections are breached.

## Calculating the costs

**B.47** The FSA has indicated in its consultation paper CP196<sup>10</sup> the level of costs, both direct and indirect, for the FSA and for firms to achieve compliance with the Directive. Similarly, the DTI has indicated costs for firms and regulators associated with implementing the Directive in the RIA for the Consumer Credit (Agreements) (Amendment) Regulations 2004<sup>11</sup>. Most financial services firms established in the UK will already be regulated in some form by the FSA and/or DTI/OFT. The additional costs for businesses as a result of implementing the Directive will be the one-off costs to change their procedures and systems. There may be additional continuing costs that arise as a result of an extension of the FSA's rules and the extension of the cancellation period in the Financial Services (Distance Marketing) Regulations 2004. For those firms that subscribe to a voluntary code (such as the Banking Code), and for firms carrying on activities that are currently subject to neither statutory regulation nor a voluntary code, the costs may be slightly higher. A summary of costs are as follows:

- Option 1 - Do nothing.

**B.48** This is not an option that is permitted under European law.

- Option 2 - Implement the Directive using the EC Act.

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<sup>10</sup> FSA, September 2003 – CP 196, Implementation of the Distance Marketing Directive: proposed rules and guidance

<sup>11</sup> [http://www.dti.gov.uk/ccp/topics1/consumer\\_finance.htm#review](http://www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review)

**B.49** The costs for implementing the Directive solely using the EC Act to give it effect in domestic law appears to be higher for both firms and Government. Costs would be higher for firms as they would have to comply with the requirements of regulators, such as the FSA, as well as a set of overarching EC Act Regulations.

**B.50** Under this option, the FSA would have to remove from its Handbook or, in many cases, modify, any provisions that appeared to conflict with the EC Act Regulations.

**B.51** Once the EC Act Regulations had come into force, businesses would have to spend time and money to interpret and familiarise themselves, as well as re-familiarise with the changes made to the FSA Handbook. The Small Business Service (SBS) believes that the cost burden would be greater for small firms under this option as they would also have to interpret the general nature of the EC Act Regulations alongside the specific provisions of the FSA's rules. This would be likely to result in continuing additional costs to firms as well as one-off costs; any new business would be faced with reviewing and interpreting two sets of provisions set up on different bases and definitions.

**B.52** A further disadvantage of Option 2 would be loss of the benefit of the detailed consideration given by the FSA to the impact of the Directive on particular aspects of the FSMA regime (for example, on its execution-only regime, a concept that is not specifically recognised in the Directive). As a result, the FSA has been able to tailor its distance marketing regime to particular areas of business practice, thereby saving firms from having to take an assessment of what is required to achieve compliance with the Directive and ensuring a consistent approach within similar types of business which prevents competitive distortions in the market and helps to ensure the Directive is properly implemented.

- Option 3 – Where possible, to incorporate the Directive's requirements into rules or other requirements of relevant competent enforcement authorities under the existing legislation (mainly FSMA) for the areas they are responsible. Using the EC Act to implement the Directive for "gap" financial services and consumer credit.

**B.53** The FSA published a cost benefit analysis of the proposed rules and changes to the FSA Handbook required to implement the Directive as Annex 1 to its consultation paper CP196<sup>12</sup>. A summary of estimated initial one-off costs and continuing costs for firms is as follows:

Sector	Number of firms	One-off costs	Continuing costs (annual)
Life insurers	200	£1m	Negligible
Other COB firms	8,850	£10.4m	Negligible
Banks	380	£7.6m	£2.2m
Building societies	65	£1.3m	£0.12m
(Affected) credit unions	30	£0.075m	£0.005m

<sup>12</sup> FSA, September 2003 – CP 196, Implementation of the Distance Marketing Directive: proposed rules and guidance

**B.54** The FSA has estimated that its one-off costs to make proposed rules is £0.15m, and continuing costs for additional monitoring and other supervisory work is up to £0.2m a year.

**B.55** The DTI have been reviewing consumer credit legislation over the past 2-3 years. A major milestone was reached on 9th June 2004 with the laying of four statutory instruments that cover advertisements, including the calculation of Annual Percentage Rates (APRs); the early settlement of consumer loans; pre contractual information requirements, and the form and content of credit agreements<sup>13</sup>.

**B.56** The Consumer Credit (Agreements) (Amendment) Regulations 2004 require that agreements be set out in a certain way to provide specific information to consumers. This updates existing consumer credit laws and fulfils the objective to have improved transparency to assist consumers selecting the most appropriate products. It is envisaged that the pre-contract information requirements of the Directive could be fulfilled by the provision of an agreement that met the requirements of the aforementioned Agreement Regulations with some minor additional information required under the Directive such as the country whose laws would govern the contract and the language to be used.

**B.57** The DTI has produced an RIA that calculates the cost of the revised Consumer Credit (Agreements) (Amendment) Regulations (see hyperlink in last footnote). Since the Directive's requirements in the area of consumer credit pre-contract information can almost totally be met by the changes brought about by the Consumer Credit (Agreements) (Amendment) Regulations there is only minimal extra cost here to be attributed to the Financial Services (Distance Marketing) Regulations 2004. This would amount to the cost of assessing the changes required and the cost of adding detail on the country whose laws would govern the contract, the language to be used and describing the cancellation rights. This should be minimal. It is estimated that these transitional costs amount to £1.5 million for those involved in the provision of consumer credit<sup>14</sup>.

**B.58** With regard to the Directive's 14 day cancellation rights, which industry will have to offer on all distance contracts for consumer credit from 31st October 2004, the transitional cost to business should be minimal as any necessary system changes can be carried out in conjunction with those necessary to fulfil the changes in regulations under the CCA<sup>15</sup>. It is estimated that the overall compliance cost of this part of the Directive will be in the range of £1 - 2 million a year, which will be a direct transfer from lenders to consumers of lost interest, paid as a result of additional cancellations<sup>16</sup>. This will be minimised by the fact that currently many lenders, particularly those with a branch network, offer the cancellation rights provided for in the CCA. There will be a cost impact on those lenders who provide credit facilities at a distance and currently do not offer any cancellation rights.

**B.59** The estimated overall cost of the Directive on the consumer credit market will be a transitional cost in the range of £1 - 2 million and an ongoing compliance cost of £1.5 million a year.

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<sup>13</sup> [http://www.dti.gov.uk/ccp/topics1/consumer\\_finance.htm#review](http://www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review)

<sup>14</sup> Based on an assumption of 1 day management time at a cost of £500 a day per firm.

<sup>15</sup> Of particular relevance will be the changes to form and content of credit agreements and changes to early settlement fees.

<sup>16</sup> This is based on an assumption that an additional 0.1% of credit products sold at a distance are cancelled with an average loss of £50 (one month's) interest. Credit cards have been excluded from the calculation, as consumers tend to choose not to use the card rather than cancel it.

## Equity and fairness

**B.60** Implementation of the Directive could bring substantial benefits to consumers, and business in the long-term. The Directive contains pre-contractual information and cancellation rights, which will be of significant benefit to consumers.

**B.61** Compliance with the Directive may add to business costs in the short-term, but in the long-term the common standards introduced should lead to increase consumer confidence in distance transactions resulting in increased sales.

## Small firms impact test

**B.62** In its consultation document, the Government asked for evidence of whether implementation of the Directive will impose significant additional costs on small or medium sized businesses.

**B.63** Respondents did not provide any evidence of additional costs to small and medium sized businesses but agreed that there may be additional costs to unregulated businesses introducing new processes and procedures in order to comply with the DMD requirements.

**B.64** Based on the information presented in this RIA and the earlier consultation, the SBS are content that there appears to be no significant or complex impact on small firms in general. However, there may be effects on small firms who specialise in this type of financial services work. The Government, including the SBS will monitor the situation.

## Competition assessment

**B.65** The Government has subjected the proposal to a competition assessment and it is not anticipated that there will be any significant impact on competition within any specific markets. Implementation of the Directive will create a level playing field for all providers of affected services, which together with increased clarity for consumers may help to encourage growth in cross-border markets within the Single Market, and thus enhance the potential for competition. Although implementation will result in some increases in the cost of offering financial services by distance means, it is not expected that such costs will fall disproportionately within specific markets, and nor is it anticipated that the scale of such costs will be sufficient to affect competition within any affected market.

## Enforcement

**B.66** It will be for the FSA to enforce and monitor compliance by FSA authorised firms and those “gap” financial service providers that FSA will regulate for the purposes of the Directive. It will be for the OFT, and Trading Standards Departments to enforce and monitor compliance in relation to the remaining activities within their scope for the purposes of the Directive, including relevant “gap” financial service providers. Annex 1 of the response document provides a map of financial services covered by the Directive.

## Recommendation

**B.67** The proposals to incorporate the Directive's requirements into the rules or other requirements of the competent enforcement authorities under the relevant existing legislation for the areas these bodies are responsible for gained widespread support. It is sensible for consumer credit to be covered by the Financial Services (Distance Marketing) Regulations 2004. This approach is the most effective way of implementing the Directive, providing benefits to both consumers and businesses. The Government has therefore decided to adopt Option 3 to implement the Directive.

Declaration

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed



Date 27<sup>th</sup> July 2004

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## Appendix A

Between 1 October 2002 and 5 November 2002, the European Opinion Research Group carried out wave 58.1 of the standard Eurobarometer<sup>17</sup> Opinion Polls to find out the EU public's views towards various aspects of financial services.

The survey is divided into the following sections:

- EU consumers' top financial priorities and views regarding their finances and financial services
- The main types of financial products and services used by EU consumers
- EU consumer use of the telephone or computer to conduct financial transactions
- The extent of and perceived obstacles to cross border trade in financial services
- Preferred means of payment
- EU consumer issues relating to financial institutions and financial services.

A selected summary of the survey's results is presented below.

#### Section IV. The extent of and perceived obstacles to cross-border trade in EU financial services

*Question 1. Whether respondents have ever obtained financial services in another EU country.*

**Table 1**

	UK (% Yes)	The EU15 average (% Yes)
Bank account	4	5
Credit card	2	4
Private pension plan	1	1
Car insurance	2	2
Life insurance	1	1
Mortgage	1	1
Stocks/shares	2	2
Collective investments	1	2
Other financial services	1	1

(Answer options are: yes, no and don't know)

<sup>17</sup> European Public opinion: Views on Financial Services, autumn 2002.

[[http://europa.eu.int/comm/consumers/cons\\_int/fina\\_serv/cons\\_experiences/euro58\\_repb\\_en.pdf](http://europa.eu.int/comm/consumers/cons_int/fina_serv/cons_experiences/euro58_repb_en.pdf)]

Eurobarometer 58.1 covers the population of the respective nationalities of the European Union Member States (15 in 2002), aged 15 years and over, resident in each of the Member States. The basic sample design applied in all Member States is a multistage, random (probability) one. In each EU country, a number of sampling points was drawn with probability proportional to population size (for total coverage of the country) and to population density. (Source)

*Question 2. Whether respondents would consider obtaining financial services from another EU country within the next five years.*

**Table 2**

	UK (% yes)	The EU15 average (% yes)
Bank account	12	12
Credit card	12	11
Private pension plan	5	5
Car insurance	10	9
Life insurance	7	7
Mortgage	8	6
Stocks/shares	9	8
Collective investments	8	7
Other financial services	5	5

Answer options are: yes, no and don't know)

*Question 3. Respondents' perceptions regarding obstacles to cross-border trade in financial services (in %)*

**Table 3**

	B	Da	D-W	D	D-O	Gr	E	F	Irl	I	Lu	NL	A	P	FI	S	UK	EU 15
No obstacles	15	56	13	12	7	17	25	14	29	20	47	24	27	28	46	33	48	24
Yes, lack of information	26	17	39	38	35	40	24	37	26	32	16	29	27	15	25	27	19	30
Yes, bad information	13	7	20	19	17	12	7	13	4	16	8	13	14	6	8	13	2	12
Yes, too risky	22	9	37	40	50	7	8	25	14	19	15	23	19	8	17	19	14	22
Yes, need large sums to invest	5	2	6	6	8	9	4	11	5	6	3	3	8	7	3	4	3	6
Yes, difficult due to distance	26	6	26	26	26	24	10	29	12	16	7	20	17	8	11	14	8	18
Yes, poor legal protection	12	8	36	36	37	8	4	22	6	16	13	20	18	4	13	21	7	18
Yes, language problems	29	12	40	39	35	27	16	34	17	26	5	28	20	13	23	25	14	26
Other	3	3	1	1	3	1	1	3	6	1	4	4	4	8	1	3	5	2
Don't know	17	9	9	9	9	17	31	7	18	20	9	12	9	31	7	9	11	15

N.B. Respondents could give more than one answer. The abbreviations for Member States are given table 5.

## Section VI. EU consumer issues relating to financial institutions and financial services

The last question relating to the financial services sector in the Eurobarometer (wave 58.1) survey asked respondents – Should consumer protection standards be harmonised in the EU? They could give one of four responses:

- No
- Yes, totally
- Yes, in part
- Don't know

Table 4 - The response in percentages:

	No	Yes, totally	Yes, in part	Don't know
<b>Belgium</b>	10	51	25	13
<b>Denmark</b>	25	36	30	10
<b>Germany West</b>	10	47	27	17
<b>Germany Total</b>	10	45	27	18
<b>Germany East</b>	10	41	28	22
<b>Greece</b>	10	59	22	10
<b>Spain</b>	10	44	21	26
<b>France</b>	15	46	25	13
<b>Ireland</b>	8	47	18	27
<b>Italy</b>	4	50	28	19
<b>Luxembourg</b>	14	39	35	12
<b>Netherlands</b>	11	49	25	15
<b>Austria</b>	11	42	30	17
<b>Portugal</b>	6	48	16	31
<b>Finland</b>	17	36	35	12
<b>Sweden</b>	16	42	31	11
<b>UK</b>	17	31	26	27
<b>EU15</b>	11	44	26	19

## Abbreviations for Member States

Table 5

B	Belgium
DK	Denmark
D West	'Old' Länder
D Total	Germany
D East	'New' Länder
GR	Greece
E	Spain
F	France
IRL	Ireland
I	Italy
L	Luxembourg
NL	Netherlands
A	Austria
P	Portugal
FIN	Finland
S	Sweden
UK	United Kingdom

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*Source: European Public opinion: Views on Financial Services, autumn 2002.*