

**The City of London Law Society
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Guy Horsington
EU Consumer Policy
Department for Business, Enterprise & Regulatory Reform
1 Victoria Street
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13 February 2009

Dear Sirs

Consultation on EU proposals for a consumer rights directive

The City of London Law Society is the local Law Society of the City of London and represents City solicitors, who make up 15% of the profession in England and Wales. Members of the Regulatory Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisors, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We have discussed the above consultation paper and felt that it would be useful to you to make the following high level comments. We are conscious that the proposed Consumer Rights Directive (the "**Directive**") is not primarily directed at financial services, and we have limited our consideration of this consultation paper purely to those aspects which are or may be relevant in this context.

Scope

You say in the consultation paper that Articles 8 to 20 of the Directive (which deal with cancellation rights) will apply to financial services in respect of "certain off-premises contracts as provided for by Articles 8 to 20". We do not find the drafting of the Directive very clear on this, but it appears to be the intention to extend the cancellation regime to financial services contracts concluded or negotiated face-to-face but away from the business premises of the provider, unless the service relates to products whose prices fluctuate in market value. Although financial services are probably not typically negotiated in these circumstances:

- a we question whether there is really a need for an additional cancellation regime given the existing consumer requirements for financial services;
- b if there is a need, we are concerned that creating a new regime which will be similar but presumably not identical to the regime under the distance marketing directive for financial services (the "**DMDFS**") (which as we understand it will remain in place) will create

confusion and add to the burden of compliance in what is already a complex area of regulation.

We might add that it is not at all clear that the cancellation provisions in the Directive as currently drafted do not apply to financial services distance contracts, and this needs to be clarified.

"Distance Contract"

While not directly relevant to financial services, we comment on this definition because we suspect that there may be some future pressure to conform the definition in the DMDFS. It seems to us that both the main changes to the definition are ill-advised:

a the suggestion that any contract will be a distance contract merely because it is "concluded" at a distance, despite possibly extensive face-to-face communication beforehand, seems to lack any sense. We suggest that there are many cases where, following face-to-face negotiation, the actual contract is "concluded", eg by exchange of documents by post, or by email. In such cases there seems no logic in applying a cancellation regime simply because of the administrative arrangements for concluding the contract;

b the removal of the criterion that the distance contract is part of an "organised scheme" is equally unhelpful. While the criterion is not always easy to apply, it avoids the risk that the cancellation regime will apply on an essentially random basis depending on the communication methods used by the parties. Particularly in the electronic era there are many cases where genuinely negotiated agreements are concluded without simultaneous physical presence at any point in the process.

"Durable Medium" and "Means of Distance Communication"

While we have no immediate comments on the revised definitions, we would urge that you keep in mind the indirect consequences of introducing new definitions of terms already widely used in other EU legislation. Use of new terminology in one definition may create unintentional implications in interpreting another definition of the same term. It is already highly unsatisfactory that the term "durable medium" has different meanings in the Markets in Financial Instruments Directive and the DMDFS, and this would be compounded by adding a third definition. If the aim is to modernise the definitions, we suggest that the Commission should be encouraged to apply them across the board.

Yours sincerely

Margaret Chamberlain
Chair CLLS Regulatory Committee

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