



Distance Marketing of Consumer Financial Services Directive

Your Partner For What's Next



Background

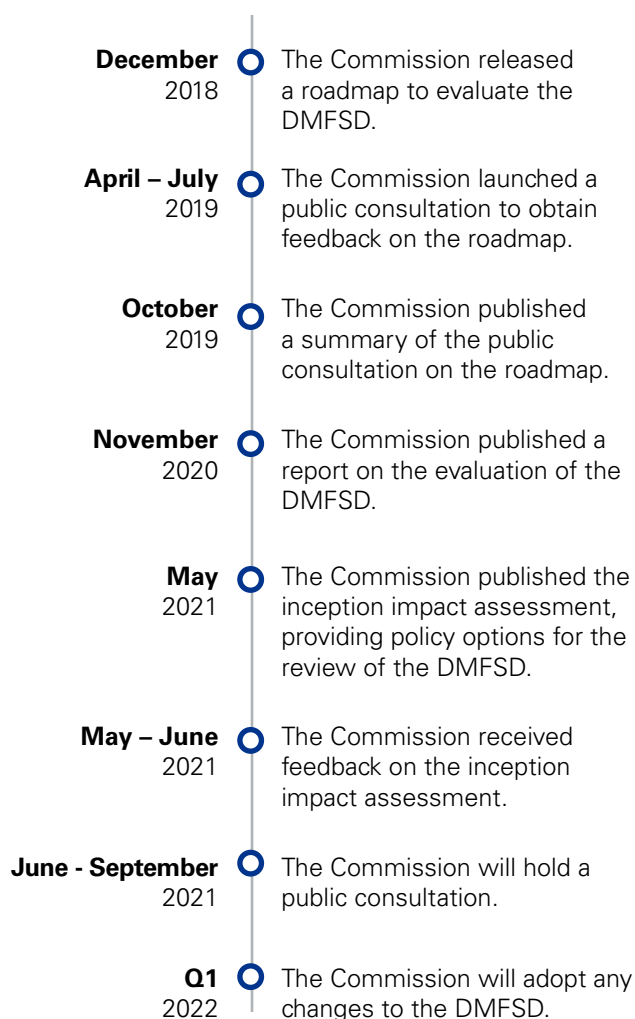
The Distance Marketing of Consumer Financial Services Directive ("the DMFSD" or "the Directive") was transposed into Irish law under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 and a subsequent amendment in 2005 ("the Regulations"). The DMFSD aims to ensure the free movement of financial services and the harmonisation of consumer protection rules.

The Directive introduced the following benefits for consumers:

- Suppliers of financial services are obliged to provide the consumer with information on the supplier, the product, the distance contract, redress and compensation prior to the conclusion of the contract;
- Consumers have a 14 day right of withdrawal; and
- Supply of services and unsolicited communications without explicit prior consent of the consumer are prohibited.

Timeline

The European Commission (hereinafter "the Commission") is evaluating the DMFSD in light of increased digitalisation in the financial services market and the development of product-specific and horizontal legislation (e.g. General Data Protection Regulation 2016/679).



2019 – Public Consultation Findings

A public consultation was held on the roadmap to evaluate the DMFSD, with a summary report published by the Commission in October 2019. Feedback was sought from a number of groups including consumers, consumer representatives, local, regional, and national authorities, consumer organisations, retail financial service providers and intermediaries involved in the distance selling of financial services.

Part I of the consultation obtained feedback from consumers and a high-level summary is outlined below:

- Desktop or laptop were the preferred means of distance communication used to research and complete financial service transactions by consumers;
- Consumers found payment services, payment accounts and insurance products the most suitable to offer via distance communication. Conversely, pension and mortgage products were found to be the least suitable;
- Fee amounts, description of the service, contract duration and termination information were ranked as the most important information elements provided to consumers;
- Information should be presented in a way adaptable to the channel used and that would allow comparison between products;
- Key information should be provided well before contract signature with a common consensus that this information should be provided by default on the product website page; and
- The level of cross border transactions were adversely impacted by uncertainty about consumer rights and conflict resolution channels.

Part II of the public consultation obtained feedback from groups such as industry representatives and public authorities and a high-level summary is outlined below:

- Internet and new devices such as smartphones contributed to developments in the provision of financial services since the introduction of DMFSD;
- The majority of respondents considered all the provisions within the Directive to still be "at least somewhat relevant". However, three common unaddressed issues were identified, these being:
 - Quality of consumer information and protection;
 - Consumer privacy and profiling issues; and
 - Legal application and overlap.
- The horizontal scope, information about the provider and existence of a right of withdrawal were considered the most effective aspects of the Directive; and
- Harmonisation of the legal framework was identified as a method of simplification and to reduce costs incurred as a result of the Directive.



2020 - The Commission's Evaluation

The Commission completed an evaluation of the DMFSD and identified a number of areas in which it could be improved. This was informed by a number of activities including the 2019 public consultation, a study contracted from an external consultant and meetings with stakeholders such as Member States and industry representatives. A high-level summary is outlined below:

- The evaluation concluded that the DMFSD and its objectives have been achieved to some extent. However, articles regarding pre-contractual information do not fully address the increase in digitalisation. Information needs to be provided in a way that is more adaptable to the digital environment so that consumers can understand the key points. The information should also be easily accessible and provided in a timely manner;
- The articles on the right of withdrawal are still partially effective and could be better enacted through additional mechanisms so that consumers can make more effective use of it. As with the provision on pre-contractual information, the interaction of this provision with product-specific and horizontal legislation could also be clarified to avoid legal uncertainty;
- The cross-border market for financial services remains limited due to language barriers, consumer uncertainty and differing tax regimes;
- There is scope for simplification by considering the interaction with pre-existing sector specific legislation addressing issues such as the provision of information to consumers; and
- Although the relevance of the Directive and the value it adds has decreased with the introduction of product-specific and horizontal legislation, it still acts as a "safety net" for products which do not have associated product additional legislation in order to protect consumers. However, the use of this feature is minimal.

2021 - Inception Impact Assessment

In late May 2021, the Commission published an inception impact assessment on its review of the DMFSD, in particular to seek feedback on the proposed policy options as follows:

1. **No policy change:** Current efforts to raise awareness of providers' and consumers' duties and rights would remain. Enforcement would continue and clarification on existing rules would be provided through case law;
2. **Repeal the DMFSD:** Repealing the Directive would remove overlap between the Directive and product-specific and horizontal legislation. As the requirements for pre-contractual information are not reflective of the growth in digitalisation and the use of the "safety net" is minimal, the impact of repeal may be minimal;
3. **Repeal the DMFSD but move parts still regarded as relevant under horizontal legislation:** For example, the articles on information and the right of withdrawal could be modernised and introduced in product-specific and horizontal legislation; and
4. **Comprehensive revision of the DMFSD:** The existing legislation could be revised and additional features introduced, such as rules on personalised advertising, robo-advice and / or the use of digital identities. The Directive would continue to act as a "safety net" for products / consumers not captured under other legislation and the revisions would render it more effective and future.

The likely economic impact depends on the policy option chosen, repealing or revising the DMFSD would lead to simplification for financial services providers. It is anticipated that any changes implemented will increase digitalisation of the marketing and sales of products.

The impact of the Commission's activities

The review process launched by the Commission displays an increased focus on conduct-related issues, fair treatment of consumers and responsible distance marketing practices.

The recent judgement from the Court of Justice of the European Union ("CJEU") in March 2020 has added further impetus to the need to evaluate the Directive. The plaintiff re-negotiated his interest rate with the lender after the expiry of a fixed rate period. This re-negotiation was completed exclusively by means of distance communication but the plaintiff was not informed of any right of withdrawal. The plaintiff claimed that the interest rate agreements involved distance selling and that therefore the right to withdraw applied. Although the CJEU found against the plaintiff, this case highlights the need for financial services providers to consider whether existing processes meet the current requirements of the DMFSD. This is particularly relevant in the context of the COVID-19 pandemic and increased digitalisation, where many contracts and contract amendments are being completed at a distance.

As noted by the Commission the revision of the DMFSD, along with other legislation, will reflect the increased number of consumers completing their end-to-end journey online. It will empower consumers to understand products and make comparisons online, thereby increasing innovation and consumer trust.

Any changes to the DMFSD will require changes to distance marketing practices and therefore, will impact processes, systems, and people across in-scope financial services institutions.

How can KPMG help?

KPMG provide risk and regulatory advice, proposition / product design and programme support services across the financial services sector. We specialise in translating regulatory requirements / change into practical, operational and compliant processes and controls to protect our clients and their customers. We can help ensure that you have the appropriate processes and system in place to meet your regulatory obligations. Examples of how our team of experts can assist include:

- Support you in establishing a programme of work to address the changes required as a result of any new requirements implemented;
- Assist you with a gap analysis, assessing the changes which will be required to be adopted, including any scope changes that are currently not covered by DMFSD or existing national legislation;
- Assist you with the design of any required changes and assess how they impact your organisation across people, processes and technology;
- Assist you with the testing of the changes to ensure that they are adequately designed pre-implementation; and
- Assist you with implementation and post-implementation assessment ensuring that the changes were applied correctly and in line with the new regulatory requirements; and
- Support you in training your people following the changes through a variety of training techniques.

It is important to maintain oversight of financial products sold at a distance to ensure continued adherence to the regulatory requirements and to adapt to upcoming regulatory change. We have an established product assurance framework, which will arm you with tools and techniques to control your product set on an on-going basis, maintain regulatory compliance and enable positive customer engagement.

For more information on the product assurance framework, please visit our website: home.kpmg

Next Steps

Feedback on the Commission's current inception impact assessment will be open until 25 June 2021. An open public consultation is available from June - September 2021; in addition, business organisations, consumer representatives / organisations and national authorities will also be consulted through targeted consultations, bilateral meetings and through existing expert groups.

The Commission has indicated that it intends to adopt any changes in Q1 2022.



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