



NOTAT

16. juli 2019
19/03829-28
son-dep

NOTAT

Response by the Danish government to the public consultation for the Evaluation of the Distance Marketing of Financial Services Directive 2002/65/EC

General remarks

The Danish government welcomes the evaluation of Directive concerning the distance marketing of consumer financial services (DMFSD). In general, Denmark supports the Better Regulation and REFIT agenda. It is important to have an ongoing focus on ensuring effective consumer protection as well as reaping the potential benefits of the common regulation in EU.

The Danish government welcomes a thorough evaluation of DMFSD. This will support the Commission's intentions towards Better Regulation as described in the Principles on Better Regulation.

The following remarks encompass the Danish position on the questions asked in the public consultation of DMFSD.

- *Interaction with other legislation*

Since the introduction of DMFSD in 2002, several pieces of product-specific EU legislation in the areas of consumer credit, mortgages, payment accounts, payment services, insurance products and investment products have been adopted.

Streamlining and simplification may lead to an increased applicability for consumers as well as a reduction of administrative burdens for traders. In this regard, the Danish government encourages the Commission to examine the possible need to streamline the information requirements across the consumer protection legislation, especially in the case of reproduced regulation in the Consumer Credit Directive (CCD) and the Mortgage Credit Directive (MCD), where it may see fit.

Furthermore, the Danish government finds it relevant to consider whether specific products still require targeted regulation. The original purpose of the DMFSD was to allow the selling of financial services on digital or televised platforms, thus allowing distance selling and marketing. Today, this is the mainstream way of marketing, and the question is whether there is

still a need for a distinct directive targeting the “regulatory net difference” between the regulation of the sector-specific directives and the DMFSD. The main requirements are quite similar across DMFSD, CCD and MCD. Therefore, the immediate Danish assessment is that *in substance* the regulation in the DMFSD should maintain but continued in the specific directives applying to different sectors/products. This might ensure greater coherence in the regulation.

- *Active consumers strengthen competition*

The development in behavioural insights has demonstrated that the extensive amount of information provided to the consumer might be counterproductive. Many studies confirm that the amount of information can overwhelm and frustrate consumers, causing them to skip reading the information provided and to choose the “status quo”. This is in contrast to the intentions behind the pre-contractual information requirements. Modern consumer legislation should pay attention to the development of behavioural insights, e.g. by giving consumers the essential information presented in a simple, clear and accessible manner. Furthermore, the information must be presented at the right time for each purchasing step the consumer goes through.

The Danish government acknowledges and welcomes the Commission’s behavioural study on the digitalisation of the marketing and distance selling of retail financial services published in April 2019 in connection with the launch of the public consultation of the evaluation of DMFSD.

- *Digitalisation*

Since the introduction of DMFSD in 2002, the retail financial sector has gone increasingly digital – within and across borders. The environment in which consumers act has changed because of digitalisation and new technologies. New business models challenge the traditional concept of traders and consumers.

DMFSD is based on previous generations of technology and this can cause friction for both traders and consumers. Technology is playing an increasingly important role in the interaction between traders and consumers, and consumers often search for financial services online. It is thus important that DMFSD reflects this technological development and supports new digital solutions that empower the consumers to compare financial services and prices from different traders.

Moreover, the access to big data and the ability to apply big data when profiling consumers have changed and improved the methods used by the traders to assess their customers. However, the need to know the customer

remains. Future regulation must ensure that the application of new technologies and the use of data is regulated appropriately and balanced for the benefit of consumers.

- *Information requirements*

Traders are obliged to comply with a large number of information requirements in product-specific regulation of advertisements, in the pre-contractual stage, and in the agreement. This can be burdensome to both the traders and the consumers, who are expected to read and understand extensive information in a purchase situation. The Danish government thus finds that there is a need to evaluate all information requirements in DMFSD in order to ensure that consumers are provided with essential and beneficial information, presented in a simple manner and at the right time in the purchase situation.

Specific remarks

Pre-contractual information requirements in Article 3

Article 3 lists the information, which shall be provided to the consumer prior to the conclusion of the distance contract. Behavioural insights have demonstrated that the extensive amount of information provided to the consumer might be counterproductive. Many studies show consequently that the information overwhelms and frustrates consumers, causing them simply to skip reading the information. This is contrary to the intentions of the pre-contractual information requirements.

The Danish government finds that it is necessary to consider how to regulate how the traders present the information to the consumers in the pre-contractual phase. In other words, the regulation should ensure that only the most important and beneficial information is presented to the consumer up front, and presented in a simple and legible manner. Furthermore, the information must be presented at the right time during the process of purchasing, making it useful for the consumer to compare the financial service across traders and make the right choice. This would reduce the risk of consumers paying more or taking unnecessary risks regarding financial services.

The Danish government welcomes the work carried out by the Commission on identifying the commercial practices consumers face at the advertising and pre-contractual stages when searching for and buying retail financial services online, as well as assessing the impacts of these practices and corresponding remedies.

However in this regard, the Danish government urges the Commission to consider a reduction of the amount of information provided up front in the

pre-contractual stage in order to limit information overload that consumers may experience. This to make sure that the most important and useful information is provided at the right time to the consumer and thereby secure effectiveness of the information requirements.

In 2017, the Danish Competition and Consumer Authority performed a laboratory-based experiment that successfully enabled consumers to take notice of terms and conditions (T&Cs) in an online shopping environment and use these more actively in choosing between products. The analysis demonstrated that if T&Cs are re-configured into icons, placed at the product selection site and consisting of the key information that consumers normally would look for in T&Cs, then the information is easier for the consumer to use in understanding and comparing products. This may also lead to stronger competition among traders to provide better T&Cs to the benefit of consumers.

The Danish experiment was based on the information requirements in Article 6 in the Consumer Rights Directive. Nevertheless, the considerable potential for simplification can be used as inspiration in the evaluation of DMFSD. An article about the study is available at [the Danish Competition and Consumer Authority website](#).

Recommendations put forward in the 'Behavioural study on the digitalisation of marketing and distance selling of retail financial services'

The Danish government acknowledges the need for rigorous enforcement in marketing and distance selling of retail financial services. Furthermore, the Danish government acknowledges the need for special attention to vulnerable consumers and the use of bundling in marketing of financial services.

The ability of comparing financial services is essential for an active demand side, which in turn will increase competition in the markets.

The Danish government welcomes the recommendation to clarify that information provision should be adapted to the user's device. The Danish government also welcomes the focus on 'time for decision-making', as some consumers are vulnerable to the psychological phenomena 'fear of missing out' in a digital context.

In general, the Danish government acknowledges that there is a need to improve the quality of information provided to consumers in the pre-contractual phase when they buy financial products and services online, taking the lessons of the present study into account. In this regard, the Danish

government urges the Commission to consider how to regulate the presentation of information as well as how to reduce the amount of information presented up front to the consumer in order to limit the information overload that consumers can experience.

With regard to the recommendation on increasing transparency around personalisation and targeting of advertisement, the Danish government urges the Commission to tackle this in a larger context. The use of data to personalise and target advertisement across markets is important for policy-makers when the market can consist of vulnerable consumers specifically for that product or service.

The Danish government acknowledges the tremendous work carried out by the Commission on this topic and will be at its disposal for further feedback if required.