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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION

of Directive 2002/65/EC concerning the distance marketing of consumer financial services

{SEC(2020) 375 final} - {SWD(2020) 261 final}

This Staff Working Document presents the main findings of the evaluation of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services ('the Directive'). The Directive aims at contributing to the progressive consolidation of the internal market in financial services sold by distance means and at a high level of consumer protection by harmonising consumer protection rules in the area. The Directive covers all consumer financial services (horizontal scope) sold through all types of distance means of communication (technology-neutral approach).

The evaluation, launched in December 2018, examined in line with EU Better Regulation rules whether the Directive has achieved its objectives and is fit for purpose. It assessed the overall functioning and practical application of the Directive as well as its continued relevance in view of market and legal developments and the current needs of stakeholders. It also draws conclusions taking into account the developments since the adoption of the Directive in 2002.

A study was contracted from an external consultant to support the evaluation, including the legal analysis, literature review, targeted stakeholder consultations, mystery shopping and a quantification exercise. Other consultation activities took place in parallel: ad hoc meetings with Member States, with industry and consumer representatives, and with the Financial Services User Group. An Open Public Consultation was held between April and July 2019.

The main results of the evaluation can be summarised as follows:

- The Directive's objective of improving consumer protection and trust has been achieved to some extent. The Directive contributed to increased consumer confidence by encouraging sufficient information disclosure, and it also helped consumers to exercise the right of withdrawal. Levels of consumer trust increased and the number of consumers experiencing problems reduced, for all financial services. However, the effectiveness of pre-contractual information has been hampered to some extent by the practical limitations in providing the required content in a digital environment in a user-friendly way and at the right point in time.
- The objective of single market consolidation has been achieved to a limited extent. The cross-border market for financial services still remains very limited, with obstacles beyond the influence of the Directive from both demand (e.g. uncertainty about consumer rights abroad, language barrier) and supply side (e.g. different tax regimes). However, the Directive has to some extent created a level playing field for financial services providers by introducing common rules for distance selling at EU level.
- Since the adoption of the Directive, several pieces of product-specific legislation have introduced similar provisions to those introduced by the Directive. Product-specific legislation usually takes precedence over the Directive's provisions when they overlap. As a result, even if the Directive is in line with product-specific legislation, such overlap can create legal uncertainty. The Directive is also complemented by horizontal principle-based

EU legislation¹. Due to their introduction, the relevance and added value of the Directive have been progressively decreasing and current achievements in consumer protection can be attributed to the Directive only to a limited extent. However, the evaluation showed that the Directive still provides a sound ‘safety net’ for the distance selling of any new financial products, or products whose sector-specific legislation does not set out rights especially regarding pre-contractual information disclosure and the right of withdrawal.

- The Directive’s main provisions on pre-contractual information are still considered relevant for products not covered by product-specific legislation or for new products. Nonetheless, the experience with information disclosure reveals the need to ensure better that information is presented in a way that can be adaptable to the digital environment, that consumers can understand the key points of the information, and that the information is easily accessible and provided in a timely manner. The Directive’s provisions on the right of withdrawal are still relevant for a number of product categories sold at a distance, but this right could be better enacted through additional mechanisms to ensure consumers can make effective use of it. The provision on preventing unsolicited services, as amended by the Unfair Commercial Practices Directive, which prohibits inertia selling practices, remains relevant. The provision on unsolicited communications has become irrelevant since it is covered extensively by other EU horizontal legislation (e-Privacy Directive, e-Commerce Directive, Unfair Commercial Practices Directive and General Data Protection Regulation).
- The cost-benefit analysis of the Directive showed the benefits to consumers to be proportionate to the Directive’s costs. The overlap with horizontal and product-specific legislation has not caused additional costs, because the impact of the Directive on recurrent costs diminished with the successive introduction of product-specific legislation. However, the evaluation showed that there is some scope for simplification and burden reduction – including streamlining the EU legal framework for financial services by taking into account the interplay with sector-specific legislation, and also addressing issues related to the process, means and format for the provision of information to consumers.
- Although the EU added value of the Directive may have decreased overtime, its “safety net” role ensures a minimum level of consumer protection across the Member States, in a way that is flexible enough to be applied to new products and circumstances thanks to its product and technology neutrality. This benefit may increase if the digitalisation of financial services leads to an increase in online cross-border selling and innovation in financial services.

In conclusion, the evaluation finds that the Directive has been effective in increasing consumer protection. It has been of limited effectiveness in contributing to the consolidation of the single market but its objectives are still relevant. The Directive has an added value at EU level, although some needs originally addressed by the Directive are currently addressed

¹ For example the Unfair Commercial Practices Directive 2005/29/EC, the e-Privacy Directive 2002/58/EC, the e-Commerce Directive 2000/31/EC, the General Data Protection Regulation 2016/679.

by other EU product-specific legislation that overlaps with the Directive. Digitalisation amplifies some weaknesses of the Directive, e.g. as regards the provision of the right amount of information at the right moment and in the right format when provided through digital channels. The evaluation results will feed into the review of the Directive, which was included among the REFIT initiatives of the Commission Work Programme.