

# REVIEW OF THE DISTANCE MARKETING OF

## FINANCIAL SERVICES DIRECTIVE

UNIT B4 – PROTECTION OF LEGAL, ECONOMIC, AND OTHER CONSUMER INTERESTS.

RESPONSIBLE OFFICIALS: GUDRUN KIRSCHNER

TEL: 95331



### **ISSUES AND OBJECTIVE**

The Distance Marketing of Financial Services Directive (DMFSD) aims at completing the single market in the distance marketing of financial services while maintaining a high level of consumer protection.

### **BRIEF HISTORY**

In 1997 a Directive on Distance Selling was adopted covering goods plus all services other than financial services. Its aim was to ensure that consumers were appropriately protected when making a transaction where the consumer and the provider are not face to face.

Because of the complexity of financial services this area was dealt with in a separate Directive, which was adopted in June 2002. It includes in particular:

- An obligation to provide consumers with comprehensive information before a contract is concluded.
- A consumer right to withdraw from the contract during a cooling-off period - except in cases where there is a risk of price fluctuations in the financial market.
- A ban on abusive marketing practices seeking to oblige consumers to buy a service they have not solicited ("inertia selling").
- Rules to restrict other practices such as unsolicited phone calls and e-mails ("cold calling" and "spamming").

The Directive also contains an obligation to review the Directive and report by April 2006 to the European Parliament and Council on the problems faced by consumers and suppliers.

DMFSD is in principle a full harmonisation Directive, which means that Member States may not retain more restrictive or prescriptive national laws. It is the first Directive where the Commission changed its approach from the traditional minimum harmonisation approach, where Member States could maintain or adopt rules which are more favourable to the consumer than the standards of the Directive, to full harmonisation. However, Council did not want to accept this approach entirely. Therefore in the area of pre-contractual information, Member States can maintain or introduce rules with more stringent requirements.

### **STATE OF PLAY**

- The Directive was adopted on 23<sup>rd</sup> September 2002. The deadline for transposition was 9<sup>th</sup> October 2004. All Member States have notified transposition of the Directive. We have carried out a transposition check and are preparing the respective infringement procedures for non-conforming implementation.
- Due to late transposition by almost all MS it was not possible to issue a meaningful report on the application of the Directive in practice in April 2006. The report is now scheduled for spring 2009.
- We launched two studies, a legal and an economic assessment of the application of the Directive.

### **THE FUTURE: The Report scheduled for 2009**

- We held a workshop in March 2008 with MS experts to discuss their implementation and application experiences as well as the interim reports from the studies.
- We are planning widespread informal consultation with both industry and consumer stakeholders in order to assess the practical effect of the Directive.
- The Commission report will explain if the Directive has achieved its goals, and if not, why. It will also identify any possible significant internal market barriers that may have been caused by Member States who have gone beyond the minimum requirements on pre-contractual information requirements. If necessary, it will announce follow-up measures which could be of a legislative or non-legislative nature.

**End**