Rialtas na hÉireann
Government of Ireland

Financial Consumer Protection Roadmap

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Department of Finance
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Contents

Foreword

The financial services sector is an important component of our economy. On a retail level it is essential in providing services for consumers, whether that be providing them with bank accounts, loans, insurance products or investment services.

It is the responsibility of legislators, regulators and supervisors to ensure that those consumers are protected to the highest possible degree.

The financial services sector continues to change at a rapid pace. The products and services on offer are changing, and new ones are being created. The very way consumers interact with their financial services providers is also changing with the transition to digitalisation.

It is essential that we, as Government, ensure the relevant legislation is introduced to keep pace with the changes in the sector. We must strike a balance which allows for innovation, but also one which ensures stability and proper protection for consumers.

Particular attention needs to be paid to the treatment of consumers by financial service providers who may be experiencing vulnerability, whether it is temporary or long-term.

We must also strive to tackle fraud. Financial scams have increased dramatically in recent years, largely due to advancements in technology.

It is important that we also facilitate competition in the market. When markets function well, consumers have access to a broad range of products and services, placing downward pressure on prices and promoting higher quality products and services through innovation, as firms seek to attract and retain customers.

Officials in my Department are working on many different pieces of legislation which address consumer protection issues in financial services. The following report outlines some recent developments and some ongoing and future planned work which will take place over the next few years.

Michael McGrath T.D.

Minister for Finance

Introduction

The purpose of this Roadmap is to bring together in one place information on some of the consumer protection policies that are being developed to deal with the changing landscape of financial services provision.

The financial system is changing, and the pace of this change keeps increasing. Established players are leaving markets, new players are joining markets, new financial products are being developed, and the very way we access financial products and services is changing, with the advancement of digitalisation.

The withdrawal of Ulster Bank and KBC Ireland from the domestic market has resulted in an increase in market share for the remaining retail banks. Over a million customers moved their current and deposit accounts since the beginning of 2022. The majority of people have moved their accounts to the remaining three banks. The mortgages and other loans held by the withdrawing banks were also bought by the remaining banks.

According to the Consumer Banking Sentiment survey published today, the use of 'fintech' which includes the growing use of apps on smartphones and contactless payments by customers of traditional banks as well as the rise in the market share of "digital only"[1] banking providers. Revolut has made significant inroads over the past 12 months – 4% of those surveyed now consider this provider as their main provider (up from 1% last year) as evidenced in the Consumer Banking Sentiment Survey report.

In order to deal with the rapid and continuous change in the financial system, it is of key importance that all stakeholders involved work together and address these changes in a coordinated way, whether they are policy makers, supervisors, or service providers.

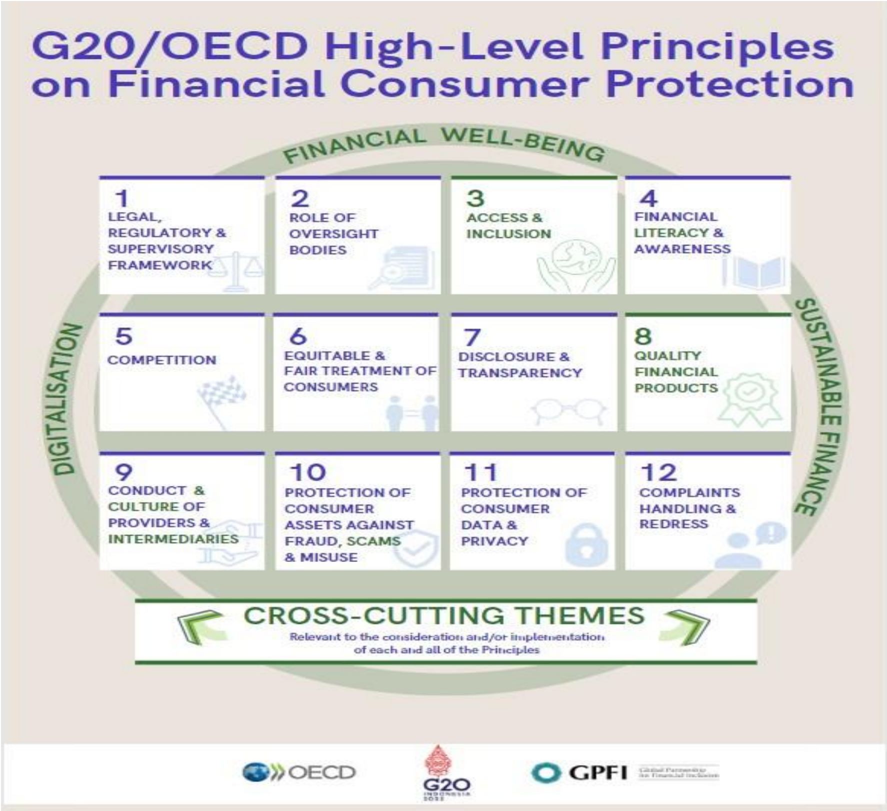
The consumer is the backbone of the financial system, the user which the system should serve. It is important that the consumer is afforded the benefits of the changes happening in financial services, but also that they are protected to the highest possible level when accessing financial products and services.

It is important for consumers to have access to quality financial products and services; that they are supported in making informed decisions; that they are afforded appropriate protections; and, that they have access to redress mechanisms when harms occur.

The agreed benchmark which OECD member countries aim to reach are the G20/OECD High-Level Principles on Financial Consumer Protection ("the Principles"). These Principles were revised and updated in 2022. The updated Principles were adopted by OECD Governments including Ireland on 12 December 2022 and are set out below. Ireland is committed to

[1]https://www.centralbank.ie/consumer-hub/explainers/what-do-i-need-to-know-about-digital-only-banking-providers

adhering to these Principles when developing policy at home and contributing to policy development in European and international fora.



OECD High-Level Principles Cross-Cutting Themes

- The **financial well-being** of financial consumers and their resilience. Financial consumer protection policies should contribute to the overall financial well-being and financial resilience of consumers.
- The impact, opportunities and risks of **digitalisation and technological advancements** for financial consumers. This includes considering the ways that consumers increasingly interact with digital financial products and services including cryptoassets and digital currencies, consumer behaviour in a digital environment, the impact of greater use of artificial intelligence, machine learning technology and algorithms.
- The impact, opportunities and risks of **sustainable finance** for financial consumers. This includes considering that financial services providers are increasingly incorporating environmental, social and governance (ESG) and other sustainability-related factors into their operations, products and services, and growing consumer demand for such products.

Overview of Financial Consumer Protection in Ireland

Recent developments

Earlier this year, in April, the Minister for Finance (“the Minister”) commenced a large portion of the Central Bank (Individual Accountability Framework) Act 2023. This marks an important further step in work to transform the culture of the financial services industry in Ireland.

In June, the Minister published the Terms of Reference for a National Payments Strategy. This is the first step to develop a roadmap for the future evolution of the entire payments system, taking account of developments in digital payments, cash usage and how future changes should be made to the legislative criteria relating to Access to Cash.

Separately in July, the Minister announced the development of the first National Financial Literacy Strategy for Ireland. This announcement was made at the launch of the Competition and Consumer Protection Commission’s (CCPC) report on ‘Financial Wellbeing in Ireland: Financial literacy and inclusion in 2023’, a report that will give us a clear baseline of the level of financial literacy in Ireland.

The changes to financial consumer protection that were delivered in 2022 have also now had a chance to bed in. The Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 requires Buy Now Pay Later (BNPL) and Personal Contract Plan (PCP) providers be authorised by the Central Bank. This extends the protections in the Central Bank’s Consumer Protection Code to these customers.

The Consumer Credit (Amendment) Act 2022 limits the interest which can be charged by moneylenders, now called High Cost Credit Providers. For cash loans, the maximum rate of simple interest chargeable is now 1% per week, or 48% per year. For running accounts, the maximum rate of monthly nominal interest is 2.38%. The Central Bank will carry out a review on the impact of the introduction of this cap in 2025.

The Price Walking ban for home and motor insurance came into force in July 2022, banning price walking, and ends the “loyalty penalty” insurance customers can experience for staying with an insurer. When customers renew home or motor insurance for the second time or more, insurers can no longer charge more than someone who is renewing for the first time, and has a similar risk profile and cost of service to current customers.

The Credit Union (Amendment) Bill 2022 is currently being considered by Dáil Éireann. It proposes to widen the products and services on offer by credit unions, and also to provide for the setting of maximum interest rates on loans by credit unions.

Mass Account Migration

The 2021 announcements of their intentions to withdraw from the Irish market by Ulster Bank and KBC Ireland led to a massive change in the structure of Ireland's retail banking system. The decision to sell the bulk of their loan books to the remaining retail banks was positive. That consolidation is good for the remaining banks, for profitability and sustainability. For consumers, it provides continuity of service at a full-service bank.

One of the major challenges of the banks' exits was the unprecedented scale of the account migration exercise (c. 1.2million accounts within 18 months) as these accounts were not transferred in bulk. This had the potential to create significant risks and disruption for consumers, businesses and others in society who depended on the accounts involved. The coordinated and collaborative approach based around customer focused arrangements, proactive communication and system wide engagement was essential to the positive outcome and completion of the transition.

A key concern at the outset was the operational capacity of other providers to deal with the opening of such a volume of new accounts. The Central Bank of Ireland ensured they would have the capacity available and as a result throughout the account closure exercise branch wait times, call waiting times and other customer service indicators (including complaints) remained stable. The Department of Finance's Consumer Banking Sentiment Survey found that among those who have switched current accounts, 37% found the process to be very easy, with 1 in 5 saying they experienced some difficulties.

Coordination and collaboration between the key stakeholders was key to achieving this success. First and foremost, consumers themselves took action to research their options, make arrangements and open new accounts. In the background other stakeholders included the Department of Finance; Central Bank of Ireland; the exiting banks and the remaining banks; other government departments and agencies, such as the Department of Social Protection, the Competition and Consumer Protection Commission and Revenue; industry representatives such as the BPFI (Banking and Payments Federation of Ireland), and Direct Debit Originators; public interest groups; and, many others not mentioned, all working together and sharing information in order to mitigate negative impacts on consumers.

Future developments

Financial Consumer Protection policy is constantly evolving to respond to the changing operating environment, and the needs and expectations of consumers. The purpose of the following section is to give readers a sense of some of the different issues which are being examined at the moment.

This includes the development of a National Financial Literacy Strategy and a National Payments Strategy by the Department of Finance. The Department of Finance is also focused on developing legislation to address Access to Cash, and Access to Bank Branches, issues which are very important to consumers in this changing financial services landscape.

Across Ireland, there are many different players working to enhance financial consumer protection. For instance, the Central Bank of Ireland is currently reviewing and updating its Consumer Protection Code. The CCPC (Competition and Consumer Protection Commission) continues to grow in its role to provide public information campaigns and financial education.

At European level there are a number of legislative projects being developed and agreed which will further enhance consumer protection when they are transposed. They include: The Consumer Credit Directive; Distance Marketing for Financial Services Directive; Payment Services Directive; MiCAR (Markets in Crypto Assets Regulation); and, the Retail Investment Strategy.

Following is some more detail on ongoing and upcoming work in the following areas: Credit; Financial Literacy and Inclusion; Digitalisation and Security; and Conduct.

Credit

Mortgages

The changed interest rate environment and the more general increase in the cost of living is causing difficulties for some mortgage borrowers. It is important that the Government, and the banking industry, responds to this challenge and work to assist their customers.

In the wake of the global financial crisis, a significant ‘whole of Government’ and regulatory framework was put in place to assist borrowers who were experiencing difficulty with their mortgage. This includes the Code of Conduct on Mortgage Arrears, more intensive Central Bank supervisory and consumer protection engagement with mortgage creditors, significant personal insolvency reform and a rebalancing of debtor rights and protections particularly in relation to a mortgage secured on a primary residence, the development of a mortgage to rent scheme and a new framework for the provision of advice and financial, legal and insolvency assistance to primary home borrowers. In addition, the enhanced standards for mortgage lending, such as the Central Bank macro prudential lending rules introduced in 2015 and new obligations on lenders to assess the creditworthiness of borrowers, as well as the greater take up of fixed rate mortgages, has helped to limit difficulty for mortgages issued under this new regulatory regime.

However, this framework and actions need to be kept under review and updated. The Government has recently extended the operation of the ‘Abhaile’ scheme for a further four years to 2027. The scheme has proven critical in terms of supporting families who find themselves in serious or long-term mortgage arrears and are at risk of losing their homes. Over 26,400 households have been supported since the scheme was set up in 2016.

As regulator, the Central Bank is continuing to engage with regulated entities to ensure that they meet the expectations, as set out in November 2022, on protecting mortgage consumers in a changing economic landscape, with a particular focus on supporting borrowers as rate increases begin to have an effect, and enhancements to the provision of information and options to borrowers eligible to switch mortgage product or provider.

This is a key focus for the Minister and the Department. The Minister met with the banking and mortgage sector at the end of August. In particular, he indicated that it is necessary for the industry to demonstrate that they are effectively engaging with their customers and, where necessary, are delivering for those co-operating borrowers in difficulty with supports and certainty and developing long-term sustainable solutions.

In response to the Minister’s initiative, the industry has now announced a number of additional measures to assist their customers including:-

- initial eligibility criteria agreed by the main lenders for customers of credit servicing firms seeking to switch their home mortgage – this should better inform consumers of the likelihood that an application to switch their mortgage will be positively considered by a new lender;
- the three retail banks open dedicated phonelines for customers of credit servicing firms who wish to discuss their mortgage switching options;
- the BPFI (Banking and Payments Federation of Ireland) will publish an information leaflet for customers explaining agreed criteria, and rollout the second phase of their 'Dealing With Debt' campaign; and
- credit servicing firms and MABS to engage on streamlined customer engagement framework.

The Central Bank is also continuing its work to scrutinise regulated firms to ensure that those borrowers who should be able to switch mortgage product or provider are supported to do so, and that those facing financial difficulties are supported with alternative repayment arrangements where appropriate.

In order to coordinate the existing 'whole of Government' approach to addressing the problem of long term mortgage arrears, and to see if any further or enhanced policy or operational measures should be considered, the Government has also decided to set up an inter-Departmental group. This will be chaired by the Department of Finance and will include the Departments of Justice, Housing, Local Government and Heritage and Social Protection, together with input from the relevant agencies under the remit of those Departments. The various Departments and agencies will be asked to bring forward any relevant proposal or initiative to improve the operation of the mortgage market.

Separately, the EU Directive on Credit Servicers and Credit Purchasers, which provides for a harmonized EU wide framework for the servicing of non-performing mortgage and other credit agreements, while at the same time safeguarding borrowers' rights, will also be transposed by the end of 2023.

ESRI switching research

The Department of Finance is running a programme of work to encourage consumer to switch their financial services providers. The Economic and Social Research Institute's (ESRI) Behavioural Research Unit has been contracted to carry out this research.

RESEARCH INTO 'WHO SWITCHES AND WHY?'

- In April, the ESRI published a "Who switches and Why?" research paper.
- It found most consumers miss out on better deals by not shopping around when buying financial products. When applying for bank accounts, credit cards, loans or mortgages, people rely on personal recommendations or a bank they use already, despite better value products usually being available elsewhere.
- When choosing their bank account, 73% of consumers did not shop around. The figure was 68% for loans and 74% for credit cards.
- Even when getting a mortgage, 46% did not compare offers, despite differences in interest payments that can add up to tens of thousands of Euros.
- Once consumers have these financial products, the majority do not consider switching to better value ones. Switching rates across the four products ranged from 6-17% over five years.
- Most people are aware that switching is an option, but cite difficulty comparing offers, costs, time, uncertainty about the process, and worries about making a mistake. Results also showed that consumers are motivated to switch primarily by financial gain but are inhibited by switching hassle and low confidence in their ability to do so.
- Shopping around appears to be a habit. The same consumers who compare offers when initially purchasing financial products are also more likely to switch in future. The main motive is simply to save money, rather than to get new features or better service.

DEVELOPMENT OF A TOOL TO BOOST SWITCHING

- The second stage of the ESRI work is the development and testing of framing techniques to design a tool to support switching. The types of questions and how they were delivered, such as using videos or quizzes, were tested on a field of participants to see which worked best.
- The results of the tests and the data from the original surveys were used to design and develop a web-based app which could be used to boost decision making in switching decisions. The app was completed in August 2023 and will be used in the field for 6 months in order to collect data on its usage.
- The aim of the app is to motivate people to shop around or switch mortgages, credit cards, loans or current accounts. The app has 5 tasks, each with a different aim.

- The video is intended to motivate people by explaining why shopping around or switching is worthwhile.
- The pledge task is what is called a pre-commitment device. Getting people to commit to an action and a date by which they will complete it makes it more likely they will follow through.
- The calculator uses a loss frame to show people what they could be losing by not shopping around or switching.
- The quiz teaches people about each product. Quizzes are one of the most effective ways to promote learning.
- The 5 steps to a better deal is a very brief overview of the application process for each product. Simplification of content is one of the most effective ways to engage people to read it.

Consumer credit Directive (2008/48/EU)

The 2008 Consumer Credit Directive is currently being reviewed and improved. The improved text is set to be agreed this year. Some of the key changes proposed are:

- Expanding the scope to include credits up to €100,000 (including low value credits of less than €200 which were previously excluded), hire purchase agreements, and buy-now-pay-later type credits.
- A requirement for Member States to prevent excessive rates being charged, by introducing interest rate caps on consumer credits.
- Member States to require creditors to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated.
- Key information to be presented before the more detailed information.
- The revisions also introduced the concept of the ‘Right to be Forgotten’ in relation to insurance policies that are required to be taken out in relation to a consumer loan. The Right to Be Forgotten in this context is generally understood as a prohibition on the influence of data on certain diseases, on decisions about access to financial services following the passage of a certain amount of time from the completion of treatment.

Financial Literacy and Inclusion

National Financial Literacy Strategy

The Retail Banking Review, published by the Department of Finance in November 2022 recommended the following:

With regard to financial literacy and digital financial literacy:

- the Department of Finance should:
  - engage with and participate fully in the financial literacy stream of the Adult Literacy for Life Strategy; and
  - seek to ensure that all stakeholders work together so that Ireland is compliant with the OECD High Level Principles on Financial Consumer Protection and the Recommendation on financial literacy.

To address the OECD High Level Principles on Financial Consumer Protection and the OECD Recommendation on Financial Literacy, the Department has established a new team who have been tasked by developing a National Strategy for Financial Literacy for Ireland.

The aim is to have a cohesive approach to financial literacy provision and ensure stakeholder coordination. This work has begun with a mapping exercise of relevant evidence and analysis pertaining to financial literacy and well-being in Ireland and will seek to establish gaps in financial education provision. This includes a stakeholder survey, which will capture details of stakeholders' current activities in financial literacy and education, as well as views on what a national strategy for financial literacy in Ireland should look like. The survey is open on the Department of Finance's website until 15 September 2023: https://consult.finance.gov.ie/en/content/national-financial-literacy-strategy. The team will be following up on the survey results and engaging with relevant stakeholders on their activities in relation to financial literacy and education.

CCPC's role and other stakeholder work on financial education

In addition to the progress on the development of a national strategy for financial literacy, there is ongoing work by stakeholders in the area. The Competition and Consumer Protection Commission (CCPC) have a statutory role in relation to financial education and capability. It provides free independent financial information for consumers through their website, public awareness campaigns, consumer helpline and financial education programmes for workplaces and schools. Last year the CCPC had nearly 800,000 visits to their online Money Tools which allow consumers to compare financial products including mortgages, current accounts, loans, credit cards and savings accounts.

The Adult Literacy for Life Strategy (ALL Strategy) is a cross government, cross-economy and cross-society strategy that brings relevant government departments, agencies and others together to work to ensure that every adult has the necessary literacy, numeracy and digital literacy to fully engage in society and realise their potential. This includes aspects of financial literacy. The Department of Finance is engaging with the Department of Further and Higher Education, Research, Innovation and Science and SOLAS, who lead on the ALL Strategy, on its progress and the development of the national financial literacy strategy.

Organisations like the National Adult Literacy Agency (NALA) also continue their work on promoting Plain English in financial services and the development of more literacy-friendly financial services for adults with financial literacy, numeracy and digital literacy needs. This includes research published in 2022 highlighting the challenges faced by consumers with unmet literacy needs in managing and accessing finance and financial services.

Access to Cash and National Payments Strategy

In recent years, the banking landscape has changed significantly in Ireland. The number of banks serving the sector reduced from 12 to 3 as banks were amalgamated or closed down and foreign owned entrants exited the Irish retail market. There has also been a considerable acceleration in technological developments and the pace of uptake has been accelerated by the COVID-19 pandemic. With that has come a decline in cash usage. Despite this decline, cash remains an important element of the payments system and the broader economy.

The Retail Banking Review also contained a number of recommendations regarding the banking and payments system. One recommendation was for the Department of Finance to develop Access to Cash legislation and prepare heads of a Bill in 2023 to require ATM operators to be authorised and supervised by the Central Bank, and to provide the Central Bank with responsibility and powers to protect the resilience of the cash system, including the authorisation and supervision of cash-in-transit firms in respect of their cash handling activities and related financial services.

According to the Department of Finance's recent Consumer Sentiment Survey, cards and in particular debit cards are the preferred payment method for adults when in a physical location, especially among 18-44 year olds. However, nearly 1 in 4 prefer to pay by cash (up four percentage points since 2022). This proportional average is mainly driven by those over the age of 65 (43%).

Following consultation with the Central Bank and other stakeholders, the Department of Finance will establish appropriate levels of access to cash, to ensure that any further evolution of the cash infrastructure will be managed in a fair, orderly, transparent and equitable manner for all stakeholders.

The Department will also prepare a new National Payments Strategy to be ready in 2024. This will set out a roadmap for the future evolution of the entire payments system, taking account of developments in digital payments, cash usage and how future changes should be made to the legislative criteria relating to Access to Cash.

It will also consider if legislation should be introduced to require certain firms or sectors to accept or facilitate the acceptance of cash; and if it should be policy to require the public service to accept cash.

Access to Branches

The Department of Finance’s Consumer Sentiment Survey found that nearly 3 in 5 (59%) respondents live within five kilometres of a branch of their main bank, while 1 in 5 (19%) live at least 10 kilometres from their main branch. Unsurprisingly, those living in Dublin are most likely to be living in closer proximity to a branch of their main bank, with 3 in 4 (76%) located within a five-kilometre radius. This is also reflected in the Urban/Rural divide – 75% of Urbanites are within a shorter range. In contrast, over 2 in 5 Rural dwellers (41%) have to travel at least 10 kilometres.

The Retail Banking Review recommended the that banks should submit robust, board approved, assessments to the Central Bank when they are planning to significantly alter the services provided through branches or when planning to close a branch. These assessments should examine the impact on customers, the suitability of alternative service provision arrangements, and the plans for migrating customers to them, especially at-risk customers.

The Retail Banking Review also recommended that banks should also carry out ex-post assessments, to include a survey of impacted customers, nine to fifteen months after the change or closure and a requirement to rectify material issues.

The minimum notice period required was recommended to increase from one to four months for significant banking service changes (e.g. going cashless) and to six months (currently two) for branch closures and credit institutions leaving the market.

Later this year the Central Bank will consult on changes to their Consumer Protection Code. The recommendations of the Retail Banking Review will be also considered as part of this consultation.

In the meantime, in April 2023, the Central Bank wrote “Dear CEO” letters to the remaining retail banks informing them that in the interim whilst the CPC is being reviewed, they should aim to adhere to the new notice periods as laid out in the Retail Banking Review.

Right to be Forgotten

Insurance Ireland and its members have recently published a Code of Practice for Underwriting Mortgage Protection Insurance for Cancer Survivors, which would be operational by the end of the 2023.

Insurers will disregard a cancer diagnosis where treatment ended more than 7 years (or more than 5 years if the applicant was under 18) prior to application. The Code will apply to mortgage cover applications of up to €500,000 for a principal residence. Insurance Ireland estimates that this threshold covers over 90 per cent of mortgage protection policies in the market.

The Department of Finance is also closely monitoring work by the European Commission to develop a Code of Conduct on access to financial services for cancer survivors, by early 2024. This objective is set out in 'Europe's Beating Cancer Plan' which was published in 2021, and includes an initiative for 2021-2023 to "Address fair access for cancer survivors to financial services (including insurance), via a code of conduct and a reflection on long-term solutions".

The 'Right to be Forgotten' is also provided for in the agreed Consumer Credit Directive, regarding insurance contracts related to credit agreements under €100,000. This directive will be transposed by Q4 2025.

Digitalisation and Security

Markets in Crypto-Assets Regulation

MiCAR will protect customers using crypto-assets that are not currently regulated. Key provisions for those issuing and trading crypto-assets (including asset-reference tokens and e-money tokens) cover transparency, disclosure, authorisation and supervision of transactions. MiCAR will come into effect on a phased basis from June 2024.

The new rules have a wide application which covers the following:

- Most cryptoassets.
- Trading venues.
- Wallets where cryptoassets are held.
- Although a notable exception is decentralised financial services (DeFi).

Under the new rules, consumers will be better informed about the risks, costs and charges linked to their operations. In addition, the new legal framework will support market integrity and financial stability by regulating public offers of crypto-assets.The MICAR agreed text includes measures dealing with market manipulation, prevention of money laundering, terrorist financing and other criminal activities.

To counter money-laundering risks the European Securities and Markets Authority (ESMA) will set up a public register for non-compliant crypto assets service providers that operate in the European Union without authorisation. This register will help consumers decide who to use – and who to avoid.

Specifically, MiCAR establishes new rules for those types of crypto-assets known as "stablecoins" including Asset-Referenced Tokens (ARTs), E-Money Tokens (EMTs) and providers of crypto asset services (known as CASPS). They will also be required to build up a sufficiently liquid reserve with a 1/1 ratio backing the value of the stablecoin, and to meet other regulatory requirements, like the separation of client funds.

Review of the revised Payment Services Directive (PSD2)

The revised Payment Services Directive (PSD2) came into effect in Ireland in January 2018. Its aim was to reduce fraud and protect consumers while opening up the payments market to new entrants. It enhanced consumers' rights, prohibited surcharging on consumer credit and debit cards, set out the payer's liability for unauthorised payment transactions and provided that a payer shall bear the losses relating to any unauthorised payment transactions up to a maximum of €50.

PSD2 introduced new security requirements, strong customer authentication, for the initiation and processing of electronic payments, which apply to all payment service providers. Which has helped to reduce the risk of fraud on all types of electronic payments, especially online payments, and to protect the confidentiality of user's financial data.

However financial services, and especially the ways in which consumer's make payments, have evolved significantly in the years since PSD2 was introduced. The changes outlined below will be introduced through the new Payment Services Directive (PSD3) and a Payment Services Regulation (PSR), making a number of changes to the legislative framework for the provision of payment services in the internal market.

The new proposals, which we are currently negotiating at EU level aim to strengthen the security of payments by enabling payment service providers to share fraud-related information, strengthening strong customer authentication rules, enhancing refund rights of consumers who fall victim to fraud and introducing a system for checking alignment of payees' IBAN numbers with their account names.

The proposals look to improve consumer rights and transparency on their account statements and fee information. Open Banking functionality and client control over payment data is also enhanced, allowing new creative services to join the market. There are also measures to increase cash availability in stores and through ATMs by allowing businesses to give cash services to clients without needing a purchase and clarifying the regulations for independent ATM operators.

Instant Payments Regulation - IBAN checking requirement

On 26 October 2022, the European Commission published a proposal for a Regulation on instant credit transfers in euro. The proposal would make it mandatory for payment service providers that currently offer standard SEPA credit transfers (which are next-day) to offer instant SEPA credit transfers to their customers.

One key aspect of this regulation which will enhance consumer protection against fraud, is the proposed requirement for confirmation of payee or IBAN checking. It will require all providers of instant payments in euro to offer a service checking the match between the account number (an IBAN check) and the name of the beneficiary before the payer authorises the transaction.

Where any discrepancy is detected, the payment service provider will have to issue a warning to the payer, as it could suggest a fraudulent transaction. Where a discrepancy is notified the payer will then have to confirm that they wish to continue with the payment.

The payment service provider of the payer will be held liable for the full amount of the credit transfer in cases where that payment service provider has failed to notify the payer of a detected discrepancy between the unique identifier (IBAN) and the name of the payee provided by the payer.

Authorised Push Payment Fraud

Authorised push payment fraud generally occurs when a person or business is tricked into sending money to a fraudster posing as a genuine payee. However, push payment fraud is a complex form of fraud which does not fall easily under any one heading. There is no one categorisation of push payment fraud, for example it may take the form of phishing, romance or investment scams. This is one of the key areas to be addressed as part of the amendments to the Payment Services Directive, and the new Payment Services Regulation.

PSD2 introduced strong security requirements for the initiation and processing of electronic payments, which apply to all payment service providers. Under PSD2 payment service providers are obliged to apply strong customer authentication (SCA) when a payer initiates an electronic payment transaction. SCA requires the customer to go through two-factor authentication made up of elements from two of three separate categories. SCA is a combination of something you know (a password or PIN), something you have (a card reader or token generator) and something you are (a fingerprint).

PSD2 provides the customer with recourse for unauthorised transactions, for example where their debit card is stolen. However, there is no requirement in PSD2 for payment services providers to directly provide recourse for the customer in the case of authorised push payment fraud, as the customer themselves has authorised the payment.

We will address this gap in the scope of the review of PSD2, by including provisions regarding the introduction of specific liability arrangements for payment services providers and additional refund rights for consumers where authorised transactions occur.

For example, the proposed PSR will require that banks refund a consumer who was scammed by a third party pretending to be an employee of the consumer's bank using the name or e-mail address or telephone number of that bank, provided the customer has reported this scam to the police.

The PSR will also include requirements for payment service providers to alert their customers of new types of fraud and how to identify and report all incidences of payment fraud.

Distance Marketing of Financial Services Directive (DMFSD)

Directive 2002/65/EC on Distance Marketing of Consumer Financial Services is currently being updated to reflect the scale of financial services now sold at a distance. The updated DMFSD is intended to be future-proof and to cover Financial Services products sold at a distance that do not exist yet, or which are not currently regulated.

Some of the key changes include:

- Updating the pre-contractual information requirements. It looks at emailing, electronic communications, and the time needed by the consumer to digest information received.
- The introduction of an easily accessible withdrawal function. The right of withdrawal is a basic consumer right. It is particularly important in the area of financial services since certain products and services are complex and might be difficult to understand. The provider will be required to notify the consumer of the right of withdrawal and to provide for a 'withdrawal function' based on the principle that withdrawing from a distance contract concluded by electronic means should be just as straightforward as entering into it.
- Online fairness: financial service contracts are increasingly concluded by electronic means. This is why, to ensure a high level of consumer protection, the proposal sets out special rules to protect consumers when concluding contracts for financial services by electronic means. It looks at adequate explanations, the possibility for the consumer to request human intervention when concluding a contract online, and accessibility for consumers with disabilities, including those with a visual impairment.
- The revised directive will also take account of the way in which service providers use technology so as to deter the use of 'dark patterns' which could be used to manipulate consumers' behaviour.

Conduct

Consumer Protection Code Review

BACKGROUND

- The Central Bank's Consumer Protection Code ('the Code') is at the core of consumer protection in financial services in Ireland.
- It aims to ensure a consistent level of protection for consumers, regardless of the type of regulated financial services provider they choose or the method of delivery.
- Given the rapidly changing financial services landscape, the Central Bank launched a comprehensive review of the Code last October.
- The Central Bank kicked off the Review by launching a Discussion Paper.
- This discussion set of topics to stimulate discussion with stakeholders – consumers and their representatives, as well as the financial services industry, government and other authorities.
- There are two broad discussion themes focusing on
    - Availability and Choice (Broad Theme A), and
    - Firms Acting in Consumers' Best Interests (Broad Theme B).
- It also sets out eight further, more focused, themes:
    1. Innovation and disruption
    2. Digitalisation
    3. Unregulated activities
    4. Pricing matters
    5. Informing effectively
    6. Vulnerability
    7. Financial literacy
    8. Climate matters
- Views on the Discussion Paper were collected between October 2022 and March 2023.
- The Department has engaged with the Central Bank in relation to the themes in the discussion paper and will continue to engage as the Review progresses.
- In July 2023, the Central Bank published an update on the engagement it has had with stakeholders so far, the submissions received on the discussion paper.

NEXT STEPS

In December 2023, the Central Bank will publish a consultation paper setting out the proposed changes.

In 2024, the review will deliver a revised, consolidated Code set down in Regulations:

- The Code will be reflected in Central Bank Regulations comprising General Business Standards, cross sectoral and sector specific requirements.
- Existing standalone consumer protection codes and regulations, including the Code of Conduct on Mortgage Arrears (CCMA), will be consolidated into the revised Code.
- The Code will be designed from the perspective of the consumer. Consumers will be able to determine both the general protections available to them and protections specific to the different types of financial services.

In 2024-2025, following the publication of the new Code, further work will be undertaken to update the Code re ongoing policy development such as:

- Implementation of Retail Banking Review recommendations (including changes which may flow from the proposed Access to Cash legislation)
- The EU Retail Investment Strategy
- The EU Review of the Payment Services Directive (PSD2)

Retail investment strategy

Currently, retail investors in the EU struggle to access the information necessary to make informed investment decisions. Financial advice may not always be in their best interest and investment products may not offer good value for money. Additionally, retail investors are at risk of being unduly influenced by marketing on social media and other communications channels.

Against this background, on 24 May 2023, the European Commission adopted a Retail Investment Package, containing a suite of measures that impact the entire investment journey of the consumer. The package amends the Markets in Financial Instruments Directive (MiFID II), the Insurance Distribution Directive (IDD), the Undertaking for Collective Investment in Transferable Securities (UCITS) Directive, the Alternative Investment Fund Managers Directive (AIFMD), the taking-up and pursuit of the business of Insurance and Reinsurance Directive (Solvency II), as well as the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

The package includes a range of measures aimed at protecting consumers when they participate in financial markets. These include:

- Improving the way information is provided to retail investors about investment products and services, in ways that are more meaningful and standardised;
- Increasing transparency and comparability of costs by requiring the use of a standard presentation and terminology;
- Ensuring that all retail clients receive at least annually a clear view of the investment performance of their portfolio;
- Addressing potential conflicts of interest in the distribution of investment products by banning inducements for "execution-only" sales (i.e. where no advice is provided) and ensuring that financial advice is aligned with retail investors' best interests;
- Protecting retail investors from misleading marketing by ensuring that financial intermediaries (i.e. advisors) are fully responsible for the use (and misuse) of their marketing communication, including where it is made via social media, or via celebrities ('finfluencers'[2]) or other third parties they remunerate or incentivise;
- Preserving high standards of professional qualifications for financial advisors;
- Encouraging Member States to implement national measures that can support citizens' financial literacy;
- Enhancing supervisory cooperation to make it easier for national competent authorities and European Supervisory Authorities to ensure that rules are coherently and effectively applied across the EU and to jointly fight fraud and malpractice.

Negotiations on the package have only recently commenced so it remains unclear when it will be completed. However, work will continue at pace on the component parts of this strategy.

Financial Services and Pensions Ombudsman (Amendment) Bill

In April 2023, the Minister for Finance secured Government approval to publish the General Scheme of the Financial Services and Pensions Ombudsman (Amendment) Bill. The legislation will ensure the Financial Services and Pensions Ombudsman continues to discharge its statutory functions in line with the Constitution following the Supreme Court ruling in the 'Zalewski Case'. These amendments will improve legal clarity as they reinforce the statutory basis of the FSPO, which is a key element of the consumer protection framework in Ireland.

[2] https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/12/2022.12.12-172837-CCPC-Influencer-marketing-report.pdf

Individual Accountability Framework (IAF) and Senior Executive Accountability Regime (SEAR)

The Government has further enhanced the Central Bank's powers through the enactment of the Central Bank (Individual Accountability Framework) Act 2023.

The centrepiece of the new legislation is the Senior Executive Accountability Regime (SEAR), a commitment of the Programme for Government, which seeks to improve the culture of the financial services industry and restore public trust in the sector.

SEAR is expected to drive positive changes in terms of culture in the financial services industry and provide for enhanced accountability while simplifying the taking of sanctions against individuals who fail in their financial sector roles.

The IAF legislation is intended to drive greater accountability in the financial sector, raising the standards of expected behaviour for individuals and firms, in order to achieve better outcomes for consumers and improve the sustainability of the financial system.

The Act provides for:

- Introduction of a Senior Executive Accountability Regime (SEAR) for management in specific sectors (credit institutions, investment firms, insurance undertakings - in short those which have a customer focus) which places obligations on firms and senior individuals within them to set out clearly where responsibility and decision-making lies;
- Introduction of Conduct Standards for individuals and all regulated financial services firms to provide binding and enforceable obligations on all Regulated Financial Service Providers (RFSPs) and relevant individuals working within them with respect to expected standards of conduct;
- An enhanced Fitness & Probity Regime which will be extended to certain categories of financial holding companies;
- Breaking the "Participation Link" to allow the Central Bank to take action against an individual for misconduct regardless of whether this involved participation in wrongdoing by a firm.

The Act takes into account the outcome of the Zalewski Supreme Court case. To that end it includes changes to the Central Bank's enforcement processes to ensure that they conform to the standards of fairness required by the Constitution and are subject to appropriate oversight by the High Court.

A public consultation on key aspects of the implementation of the Individual Accountability Framework, including draft regulations and guidance, was conducted by the Central Bank. The parts of the Act not covered by the consultation were commenced in April 2023. The remaining provisions of the Act, relating to Certification requirements for Fitness & Probity, Conduct Standards and SEAR will be commenced in December 2023.

Conclusion

The importance of consumer protection in financial services cannot be understated. Developing policies at a national level and contributing to the development of legislation at a European and international level are key priorities for the Department of Finance and the wider government.

The overview above of the current and future work taking place does not capture all and everything being done, but gives a good flavour of some of the particular projects in the main policy areas. In reality, there can be a consumer protection aspect to much more work, and it is a factor which is always taken into account when developing any policy which could ultimately impact consumers.

It is important for the economy to support the development and promotion of financial services. The financial services landscape is constantly changing and the pace of that change continually increases. The increased shift to digital and online financial services has thrown up many benefits, and also risks. There is always a need for financial services to be regulated, in such a way which encourages new products, services, and new providers. But when developing such regulation, it is of key importance that we also take particular care to ensure consumers are ultimately protected to the highest possible degree.

Our challenge is now to look forward to encapsulate the possibilities of such change in whatever policies or legislation is developed to ensure it keeps pace with the dynamic market of financial services which puts the consumer and their protection at its core.

Below is a summary of some of the upcoming milestones for the policies and regulations expected to be delivered over the new two years.

2023 Q4
Prepared Heads of Bill for multiple access to cash issues

2023 Q4
Enactment of the revised Financial Services and Pensions Ombudsman (Amendment) Act

2023 Q4
IAF Act fully commenced, Conduct Standards and extension of Fitness and Probity regime apply from 31 December 2023

2023 Q4
Complete transposition of EU Directive on Credit Servicers and Credit Purchasers

2024 Q2
Completion of ESRI testing of switching tool

2024 Q3
Central Bank Regulations implementing SEAR to apply from 1 July 2024

2024 Q4
Publish National Strategy on Financial Literacy

2024 Q4
Complete transposition of MiCA Regulation

2024 Q4
Publish National Payments Strategy

2024 Q4
Completion of Central Bank review of the Consumer Protection Code

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2025 Q4
Complete transposition of Consumer Credit Directive

2025 Q4
Complete transposition of Distance Marketing of Financial Services Directive

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