

The Directive on Distance Marketing of Consumer Financial Services: open public consultation

Fields marked with * are mandatory.

Introduction

Directive [2002/65/EC](#) on Distance Marketing of Consumer Financial Services ('Directive') lays down rules on three key areas (pre-contractual information; right of withdrawal; ban of unsolicited services) concerning the distance marketing of consumer financial services. Any service of a banking, credit, mortgage, insurance, personal pension, investment or payment nature falls under the scope of Directive whenever the financial service is purchased at a distance.

The Directive aims at promoting the free movement of financial services in the single market by harmonising consumer protection rules governing this area. The Directive sets out a list of information items concerning the financial service that the consumer should receive before the distance contract is concluded.

The Directive applies horizontally across all EU legislation in the field of financial services, as long as the product-specific legislation (e.g. Consumer Credit Directive or Mortgage Credit Directive) or horizontal legislation (e.g. the General Data Protection Regulation) does not provide specific and more detailed rules. In this regard, the Directive is considered to contain a 'safety net', in the sense that in the absence of present or future rules regulating the issues covered by the Directive, the latter will apply. Whereas the Directive had clear value added when it entered into force, many of its substantial elements have been taken over by sectoral legislation that has been adopted afterwards, e.g. in the context and aftermath of the financial crisis.

In the 2017 [EC Consumer Finance Action Plan](#), the Commission undertook to monitor the distance selling market of retail financial services in order to identify the potential consumer risks and business opportunities in this market and, on that basis, decide on the need to amend distance-selling requirements. In this context, a behavioural study was conducted: [Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services](#). On the basis of the Commission's [2019 Work Programme](#), the Commission launched an evaluation of the Directive. The [evaluation](#) found that the Directive has been partially effective in increasing consumer protection and is still of limited effectiveness in promoting the cross border delivery of financial services. While the Directive's objectives are still relevant, it is unclear to what extent it contributes to address the current challenges consumers face when purchasing a financial service at distance i.e. online or off premises. In particular, it found that digitalisation exacerbated some aspects not fully addressed by the Directive.

The Adjusted Commission 2020 Work Programme listed the Directive as subject to a "regulatory fitness"

exercise. In this context, the Commission will carry out an impact assessment to see whether and if so, how, to revise the Directive.

This public consultation is an opportunity for consumers, retail financial services professionals, national authorities and any other interested stakeholders to give their opinions on how they think the Directive is functioning. The results of this consultation will help the Commission when drafting the Impact Assessment and assessing the Directive.

The consultation consists of two short questionnaires. The first (set out in Part I) is aimed at the general public. The second (set out in Part II) is for other stakeholders such as associations, authorities and financial services providers.

The public consultation will be available in all 24 official languages of the EU. Shortly after the close of the consultation, the Commission will publish a summary of the contributions received.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak

- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Peter

* Surname

Norwood

* Email (this won't be published)

peter.norwood@finance-watch.org

* Organisation name

255 character(s) maximum

Finance Watch

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)

- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands

- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan

- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon
- Canada
- Cape Verde
- Cayman Islands

- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau

- Guyana

- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong

- Hungary

- Iceland
- India
- Indonesia
- Iran

- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma

- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua

- Niger

- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan

- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia

- Timor-Leste
- Togo

- Tokelau
- Tonga

- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands

- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
Ascension and
Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States
Minor Outlying
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Part I: General questions

If you are not replying as a member of the general public, please go to Part II.

In this part of the questionnaire, we would like you to share your experience of buying retail financial services such as consumer loans, insurance and bank accounts using means of distance communication such as the internet, telephone or postal services. This part of the questionnaire does not cover face-to-face interactions with a financial services provider.

1. Have you bought one or more of the below financial services by means of distance communication (e.g. through the internet by using your computer /smartphone/tablet, or through the telephone or through postal service) in the past 5 years?

| | Yes | No |
|---|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance, etc.) | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> |

| | | |
|--|-----------------------|-----------------------|
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> |

2a. If you bought one or more of the below financial services by means of distance communication in the past 5 years, how satisfied were you with the information (e.g. information on the identity of the service provider and on the product/service, information on your rights) received before you concluded the contact?

| | Very Satisfied | Satisfied | Average | Not Satisfied |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your reply if you were dissatisfied with the information provided prior to the purchase of the financial service

2b. In your opinion, would your experience of contracting any of the financial services mentioned above have been smoother if (5=completely agree, 1=totally disagree):

| | 5 (Totally Agree) | 4 (Agree) | 3 (Neutral) | 2 (Disagree) | 1 (Totally Disagree) |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|
| The pre-contractual information was adapted to your device (e.g. the information would fit into your smartphone) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The main information on the financial service provided at pre-contractual stage would be visible at a glance | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The pre-contractual information provided by different suppliers would be provided side-by-side or through a comparison website | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The pre-contractual information contained certain key information which highlighted in a prominent way (e.g. fees, charges) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Additional information would have been presented through the use of hyperlinks or sent separately e.g. in a pdf via email | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The pre-contractual information would have used simpler and more straightforward language | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

3a. The Directive grants, for certain financial services a right of withdrawal to the consumer. If you bought one or more of the below financial services by means of distance communication in the past 5 years, how often, if ever, have you exercised your right of withdrawal?

| | More than once | Once | Never |
|---|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Certain insurance products (e.g. car or home insurance) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

3b. Would the right of withdrawal be easier to use if:

| | Yes | No | Don't know |
|--|-----------------------|-----------------------|-----------------------|
| A reminder is sent to the consumers shortly (e.g. 3 days) before it expires | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A withdrawal form is provided whenever a financial service contract is concluded | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| It is already easy to use and thus, no additional requirement is needed | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

4. The Directive exempts the consumer from any obligation in the event of unsolicited supplies (e.g. you are given a credit even though you did not request it). In the past five years, how often, if ever, have you been provided, without your request, with any of the below financial services?

| | More than once | Once | Never |
|---|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance, etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain the outcome if you were supplied with any of the above financial service in an unsolicited manner:

5. If you purchased your financial service by means of distance communication, which of the below was/were the decisive factor(s) to conclude the contract at distance rather than in a shop or office?

at most 3 choice(s)

- It allows me to access offers from all over the European Union
- It allows me to access cheaper offers
- It allows me to compare offers more easily
- It allows me to access services that are better adapted to my needs
- It allows me to take more time to review the offers
- It means I can access the service 24 hours a day
- Other

Part II: Technical questions on the specific value added of the provisions of the Directive compared to other legal acts

This part is aimed at obtaining replies from experts and/or practitioners in the field (financial services providers, associations, authorities, academics). If you are a member of the general public, replies to Part I are enough and you do not need to reply to the forthcoming questions.

1. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on pre-contractual information stemming from the Directive applied or enforced with regard to the following financial services?

| | On a daily basis | Often | Rarely | Never |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain how the articles on pre-contractual information stemming from the Directive are still applied or enforced, providing the situation when it was applied or enforced:

2. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on the right of withdrawal stemming from the Directive applied or enforced with regard to the following financial services?

| | On a daily basis | Often | Rarely | Never |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain how the right of withdrawal stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:

3. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited services of the Directive applied or enforced with regard to the following financial services?

| | On a daily basis | Often | Rarely | Never |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain how the article on unsolicited services stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:

4. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited communication of the Directive applied or enforced with regard to the following financial services?

| | On a daily basis | Often | Rarely | Never |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain how the article on unsolicited communication established by the Directive is still applied or enforced, providing the situation when it was applied or enforced:

5a. How useful is the ‘safety net’ feature of the Directive (i.e. the application of the Directive in those instances when new products appear on the market and are not yet subject to specific regulation and when the product specific legislation does not cover, or does not cover sufficiently, the rules established by the Directive) for the following financial services?

| | Very useful | Useful | Not useful | Irrelevant |
|--|----------------------------------|----------------------------------|-----------------------|-----------------------|
| Consumer credits (including credit cards) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mortgages | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Insurance products (e.g. car, home insurance etc.) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment accounts | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Investment products (e.g. shares, bonds or funds) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment services (such as money transfer services) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal pension products | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain

The ‘safety net’ feature of the DMFSD is useful for all types of retail financial services products sold online that are new to the market and are not (yet) covered by product-specific legislation. Recent years have shown that new products continuously appear on the online financial services market which have not been foreseen by product-specific legislation and are therefore unregulated for at least a few years. Examples of this can be found in all financial services sectors. For example, payday loans, peer-to-peer lending and interest-free credit entered the market after the introduction of the Consumer Credit Directive (CCD). As these products were not known at the time the CCD was drafted, they are not in scope of the directive. These products have proven to be very risky for consumers and have led to consumer detriment for years.

The DMFSD has important consumer protection elements that can protect consumers in such cases. For example, the DMFSD ensures that consumers receive pre-contractual information about a product which helps to mitigate mis-selling by ensuring that consumers are in a better position to make an informed decision and compare different offers. Moreover, it allows consumers to withdraw from a product after 14 days and protects them from unsolicited services, i.e. selling of financial services without the explicit consent of the consumer, and unsolicited communications.

Data from the EC evaluation study of the DMFSD shows that the DMFSD has not been enforced properly over recent years and that therefore it could not live up to its full potential. However, if it had been properly enforced, mis-selling of risky financial services online, such as the sale of payday loans, could have been mitigated.

While product-specific legislation is increasingly bringing currently unregulated products into scope, this is often not immediately after a new financial services product is brought to market given the need for a proper legislative process to bring them into scope first. The CCD review, for example, might bring the risky consumer credit products alluded to above under its scope as part of the current review of the directive. However, this will only be after several years of these products having been unregulated. In addition, it is likely that in the coming years further complex credit products will emerge which will not be automatically covered by the CCD. Financial services providers are increasingly coming up with new products that have

complex business models and are designed in a way that differentiate them from traditional products and are therefore not (immediately) in scope of product-specific legislation.

Moreover, there are ample examples of product-specific legislation that do not cover or do not cover sufficiently key consumer protection rules of the DMFSD. For example, without the DMFSD, key consumer protection requirements would be lacking for savings accounts sold online. Currently, there isn't any product-specific legislation providing consumers the right of withdrawal for savings accounts (the DGSD, for example, does not provide for this right). The EC evaluation study of the DMFSD, however, shows that having a right of withdrawal for savings account in place is important. Almost one quarter of consumers consider that the time allocated to review pre-contractual information about a payment account is not enough and that they often feel pressured into making a quick decision. A right of withdrawal for savings accounts is therefore needed to ensure that consumers have the possibility to withdraw from savings accounts in cases where they purchased these products based on rushed and ill-informed decisions.

Other examples can be found in the insurance sector. Consumers of insurance bought online would not be able to benefit from the right of withdrawal without the DMFSD as the Insurance Distribution Directive (IDD) and PRIIPS do not contain this provision. Moreover, unsolicited services are not covered by any insurance-specific sectoral legislation. In addition, as highlighted by EIOPA (see page 75 of Annex 1 to the Evaluation Study of the DMFSD), with digitalisation and the increased influence of InsurTechs and price-comparison websites, it is likely that new products/services/selling frameworks might emerge and that the DMFSD will be a necessary safety net to avoid possible legal loopholes in the insurance sector in the future.

In addition, as more and more consumers are involved in the retail investment market as this is being promoted as part of the EU's Capital Markets Union (CMU) project, it is important that there is a safety net for consumers of new retail investment products not yet covered by sectoral legislation. A good example for new retail investment products emerging on the market that are unregulated are crypto assets.

5b. Can you provide concrete examples when you applied the rules of the Directive since they went beyond the rules covered by specific financial services legislation (e.g. the right of withdrawal for payment accounts contracted at a distance)?

5c. Can you provide concrete examples when you applied the rules of the Directive for products which are exempt from the product specific legislation (e.g. payday loans, which are a type of credit agreement, contracted at a distance and are below EUR 200)?

5d. Can you provide concrete examples when you applied the rules of the Directive for new products that appeared on the market before product-specific legislation was enacted (e.g. virtual currencies bought at a distance)?

6. Has the application and enforcement of the articles of the Directive progressively diminished due to the entry into application of subsequent product or horizontal legislation?

- Yes
- No
- Don't know

Please explain

7. Would the repeal of the Directive lead to:

| | Yes | No | Don't know |
|---|----------------------------------|-----------------------|----------------------------------|
| Regulatory gaps leading to an unlevel playing field (e.g. undue competitive advantage for financial providers in Member States that would provide a less protective framework) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Lower consumer protection in those areas which are not as yet covered by product specific or horizontal legislation (e.g. pre-contractual information for consumer loans below EUR 200) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Increased difficulties for cross-border trade | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A reduction of administrative burdens for Member States (e.g. reduction of costs for supervision of the obligations stemming from the Directive) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| A reduction of regulatory costs for financial service providers (e.g. less compliance costs related to pre-contractual information obligations stemming from the Directive) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| None of the above since in practice the Directive scope of application has lost most of its relevance | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain

The directive should not be repealed as it provides an important 'safety net' for consumers in circumstances where new products appear on the market which are not yet subject to specific regulation. In addition, the DMFSD provides important consumer protections in situations where product-specific legislation does not cover, or does not cover sufficiently, key consumer protection rules covered in the DMFSD.

In recent years, a number of new financial services products emerged on the online market which are currently not covered by product-specific legislation. Examples for this are payday loans, peer-to-peer lending products or crypto assets. As the retail financial services market is increasingly becoming digitalized, the trend of new/innovative financial services products emerging on the online market is likely to further accelerate in the years to come. Not having a minimum level of protection for consumers buying these products would leave consumers exposed to consumer protection risks.

In addition, if the DMFSD were repealed, regulatory gaps would emerge, leading to an uneven playing field for financial providers as a lack of harmonized rules would provide an undue competitive advantage for financial providers in Member States that provide a less protective framework. The repeal of this directive would also hamper cross-border sales of new financial services products online, as consumer protection rules help promote cross-border sales. Having harmonized consumer protection rules in place creates confidence for consumers to buy products from other Member States. In addition, harmonized pre-contractual information facilitates cross-border sales as it allows consumers to compare product offers cross-border.

In recent years, the DMFSD has been poorly enforced in the EU. However, enforcement and the usefulness of a directive are two completely different things. The proper enforcement of a directive is very important, however, poor enforcement does not mean that the directive is not relevant/useful. Instead, in our view, the directive should be amended to strengthen its enforcement provisions.

For example, if the DMFSD had been better enforced in recent years, the high amounts of mis-selling we witnessed with regards to payday loans on the consumer credit market could have been minimized. A Finance Watch study of the EU consumer credit market, for example, shows that only 31% of consumers have been able to make an informed decision when purchasing payday loans online. If the DMFSD had been properly enforced this could have been mitigated as the directive ensures the provision of key pre-contractual information. Instead of removing the DMFSD, the enforcement provisions of the DMFSD should be strengthened to ensure it can meet its aims. For example, the cooperation and coordination requirements of the various authorities in charge of enforcing the DMFSD should be enhanced. In addition, the Directive should have provisions ensuring that national competent authorities have sufficient powers and resources to effectively enforce the directive.

Furthermore, in order for the DMFSD to be more effective, it should be revised in key areas. The directive is very old (from 2002) and therefore, like any piece of legislation from that time, needs not only updating but could also be strengthened. For example, it could cover consumer protection issues that apply to a broad range of financial services products but are currently not regulated by any other EU legislation such as rules on consumer consent. Financial services providers are increasingly using practices such as pre-ticked boxes to receive consumer consent without consumers being consciously aware of it, leading to consumers purchasing financial services products without consciously wanting to. Likewise, the DMFSD could cover and clarify the rules on the use of personal data for financial providers when customizing the prices for certain financial services products (e.g. for insurance and consumer credit). The requirements in the DMFSD should also be revised to focus much more on the presentational aspects of disclosure for digital channels. This should include rules regarding the form, prominence and timing of disclosure. Moreover, we think that the DMFSD could be a useful directive to regulate comparison websites which are currently mostly unregulated.

We urge the Commission to not infer from the fact that the directive has been poorly enforced that it should be repealed but instead look into ways to strengthen this directive which is relevant and useful and find ways to improve its enforcement. For the purposes of stronger enforcement provisions, we would suggest using the same legal text used in Article 5 of the Mortgage Credit Directive (MCD). This article, amongst others, specifies that Member States shall designate a national competent authority empowered to ensure the application and enforcement of the directive in their jurisdiction.

8. The Directive bans unsolicited services and communications from suppliers when such services or communications lack the consumer's consent. However, over time, through the introduction of product specific and horizontal specific

legislation, in particular Directive 2002/58/EC (e-Privacy), Directive 2005/29/EC (unfair business-to-consumer practices) and Regulation (EU) 2016/679 (General Data Protection Regulation), the bans established by the Directive have lost their relevance. Should the revision of the Directive lead to the repeal of the current articles (Articles 9 & 10) concerning unsolicited supplies and unsolicited communications?

- Yes
- No
- Don't know

Please explain

The revision of the Directive should not lead to the repeal of the articles concerning unsolicited supplies and unsolicited communications. Even though horizontal non-financial services-specific legislation (e.g. the e-Privacy Directive) exist which cover this, it is not enough to protect consumers from unsolicited services and unsolicited communications in the digital financial services market.

Unsolicited sales as well as unsolicited communications remain serious consumer protection risks in the online financial services market despite the E-Privacy Directive, the GDPR, and the UCPD. For example, a recent publication by BEUC highlights concrete examples of unsolicited services in the online consumer credit market: https://www.beuc.eu/publications/beuc-x-2019-019_review_of_the_consumer_credit_directive.pdf. Moreover, we have been witnessing unsolicited aggressive marketing when it comes to crypto assets, including high-levels of phishing and scam emails being sent out to individuals that together pose a high risk for retail users.

A reason for this is that it is often unclear to financial services providers and regulators how and to what extent horizontal non-financial services-specific legislation (GDPR, e-Privacy Directive, etc.) applies to the financial services sector. In addition, the current diversity of measures makes the legal framework complex to understand and apply and the only product-specific legislation in the financial services sector which covers these two topics is the Payment Services Directive (PSD) II. As a result, the European Commission has seen a necessity, for example, to clarify in its recent proposal on revising the CCD that unsolicited sales of consumer credit is banned.

Therefore, having the DMFSD reinforce horizontal non-financial services-specific legislation on unsolicited services and communications (e.g. the GDPR) and clarifying how it applies to the online financial services market specifically has a lot of added-value to protect consumers of all financial services products sold online.

In addition, financial services providers are increasingly using innovative, 'unregulated' practices to obtain consumer consent (e.g. via pre-ticked boxes) to receive communications or purchase products without consumers consciously wanting to. This leads to the selling or renewing of financial services products without consumers' conscious consent, leading, in some cases, to financial distress (e.g. consumers taking out a loan they are not able to afford) or to the sales of financial services products that are not suitable to a consumer's needs. This is not addressed in any current product-specific or horizontal legislation. Thus, amended provisions on unsolicited services and communications in the DMFSD could play an added-value in this case by banning any inferred agreements to purchase a financial service (e.g. by banning the use of pre-ticked boxes for sales of any types of financial services) and to receive unsolicited communications.

Contact

JUST-E1@ec.europa.eu