

European Mortgage Federation-European Covered Bond Council (EMF-ECBC)

Responses to Consultation on Distance Marketing of Financial Services Directive (DMFSD)

20 September 2021

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)	X			
Mortgages	X			
Insurance products (e.g. car, home insurance etc.)	X			
Payment accounts				
Investment products (e.g. shares, bonds or funds)				
Payment services (such as money transfer services)				
Personal pension products				

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:

The DMFSD requires specific pre-contractual information for consumer credit, so these loans are subject to additional information.

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)				
Mortgages				
Insurance products (e.g. car, home insurance etc.)				
Payment accounts				
Investment products (e.g. shares, bonds or funds)				
Payment services (such as money transfer services)				
Personal pension products				

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)				
Mortgages				
Insurance products (e.g. car, home insurance etc.)				
Payment accounts				

Investment products (e.g. shares, bonds or funds)				
Payment services (such as money transfer services)				
Personal pension products				

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)				
Mortgages				
Insurance products (e.g. car, home insurance etc.)				
Payment accounts				
Investment products (e.g. shares, bonds or funds)				
Payment services (such as money transfer services)				
Personal pension products				

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)	X			
Mortgages	X			
Insurance products (e.g. car, home insurance etc.)	X			
Payment accounts				
Investment products (e.g. shares, bonds or funds)				
Payment services (such as money transfer services)				
Personal pension products				

Please explain

When a specific directive exists, it is applied. The requirements of the DMFSD are used when the product is not in the scope of an existing directive, particularly the provisions relating to pre-contractual and contractual information, and to the right of withdrawal. This is the case for certain consumer loans, such as split payments.

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

It takes a significant amount of time to adapt horizontal legislation and sometimes the provisions of a specific directive do not include provisions which are appropriate to address recent technical developments or new consumer habits. Therefore, we consider the provisions of the DMFSD to still be relevant – in fact, they are employed on a daily basis, especially for consumer credit. When a product or service is also sold at a distance, the Directive continues to offer valuable consumer protection.

In this respect, we do not share concerns for example with regard to the appropriateness of the Directive's pre-contractual requirements for a digital environment or for new commercial practices. The main purpose of the Directive is to create a legal framework when nothing exists. The definition of a financial service is sufficiently broad ("financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature) as to cover new products as a safety net.

The 14-day right of withdrawal, for its part, is well-known by banks and consumers. It is an important right which reinforces consumer protection. Modifying the right of withdrawal to potentially move to a general reflection period before contracting does not offer more guarantees to consumers and is likely to create further disruptions for all products not covered by the Mortgage Credit Directive, without significant gain for stakeholders.

Finally, the European Commission expresses concerns about the limited impact of the Directive on cross-border dimension of purchasing financial products. However, this limited impact is not related to the content of the legislation but can rather be attributed to other factors beyond the scope of the Directive, including language, and differences in taxation regimes, but also the fact that typically consumers still tend to the largest extent to interact with banks/intermediaries they know best, therefore national, even if this is at a distance.

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)		X	

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)	X		
Increased difficulties for cross-border trade		X	
A reduction of administrative burdens for Member States (e.g. reduction of costs for supervision of the obligations stemming from the Directive)		X	
A reduction of regulatory costs for financial service providers (e.g. less compliance costs related to pre-contractual information obligations stemming from the Directive)	X		
None of the above since in practice the Directive scope of application has lost most of its relevance			

Please explain

The directive guarantees a high level of protection for consumers and creates a comprehensive framework, which applies to a wide range of financial services and products and, given its long-standing nature, is well known by consumers.

With this in mind, we firmly believe that the Directive should be maintained. Furthermore, current efforts to raise providers' and consumers' awareness of their obligations and rights should be maintained. This should be combined with coordinated enforcement via the Consumer Protection Cooperation network and possible harmonisation of interpretation through the Court of Justice case law where necessary, within the existing scope of the Directive.

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 provisions of the DMFSD are complementary to other existing texts.