

EC 'Have Your Say' Consultation on Review of the rules on Distance marketing of consumer financial services

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

6 July 2022

The EMF-ECBC is pleased to provide the following comments on the European Commission's Proposal for a Directive amending the Consumer Rights Directive (CRD) and repealing the DMFSD. Despite our overall positive assessment, we believe it is worth highlighting the need to further clarify and reflect on some elements as follows:

Scope

- The scope of the Directive is unclear and should be clarified. Indeed, it is our analysis that there are inconsistencies relating to the interaction with product-specific legislation that need to be further investigated in order to avoid legal uncertainty. See below for further details.

Information requirements/Pre contractual information

- The Proposal aims to simplify the customer journey, however the introduction of certain information requirements could serve to complicate the consumer experience.
- We believe that the obligation to provide "adequate explanations" in this specific context, will result in further information overload and is not compatible with certain types of distance selling media (e.g. smartphones).
- Furthermore, the provisions included in Art. 16a(3), requiring banks to provide information to the consumer at least one day before the consumer is bound to the contract and to remind consumers of their right of withdrawal, result in information overload for consumers and additional costs and administrative burden for banks. We believe that these requirements should be deleted.

Right of withdrawal

- While it is indicated that product-specific legislation regulating online financial services (CCD, MCD, PSD II and IDD) should prevail over those set out by the new CRD, there are some cases (PSD II and IDD) in which the right of withdrawal is not regulated. This means that new CRD rules appear to affect a large scope of online financial services already regulated by sectoral directives i.e. all online payment services (PSD II), all insurance services (IDD), certain consumer credits exempted from the CCD (those below EUR 200 and over EUR 75,000, etc.) and certain mortgage credits (where local legislation opted for a reflection period instead of a right of withdrawal). It is necessary to clarify the scope of the revised CRD and the wording of article 16b point 6, as the wording of the new rules on the right of withdrawal appear to affect almost all online services.

- Furthermore, the right of withdrawal provisions (withdrawal button and additional reminder) are stricter than product-specific legislation (CCD, MCD), which is inappropriate, especially for the contracts excluded from those directives (e.g. consumer credit below EUR 200).
- Art. 16b(6) should be revised to refer only to the 'right of withdrawal' and not its 'exercise' as this is not consistent with the information requirements e.g. in the CCD, where there is no specific procedure for the exercising of the right.
- The introduction of a withdrawal button gives rise to a number of legal and technical considerations (e.g. no retention of proof and dates; uncertainty for digital sale of products regulated by other sectoral legislation; no explanation on how such a tool should be implemented). There are already mechanisms in place by which consumers can exercise this right which are clearer, well-functioning and less costly.

Right to human intervention

- Mindful of the need to guarantee legal certainty, the reference to the right to human intervention included in Art. 16d is particularly broad. We therefore recommend clarifying the circumstances for the application of such a right.