



Digitalisation - Distance Marketing of Financial Services Directive (DMFSD) - Revised proposal

■ Why does it matter to intermediaries?

On 6th June, a provisional agreement was reached between the European Parliament and the Council on the revised Directive concerning the marketing of financial services contracts – including insurance ones – concluded at a distance (DMFSD).

As proposed by the Commission in May 2022, this Directive aims to amend the rules established back in 2002, strengthen consumer rights and foster the cross-border provision of financial services in the Single Market. The Commission's evaluation of the DMFSD indicated that its relevance decreased given the volume of product/sector specific measures which contain protective provisions for consumers (e.g. IDD, CCD, PRIIPs or GDPR) and the rapid pace of technological innovation. However, the Commission noted the ongoing relevance of the DMFSD in areas where financial products are not yet subject to product-specific EU legislation ("safety net feature").

The current DMFSD applies to intermediaries when distributing insurance/financial products under an organised distance sales/service provision scheme and exclusively via one or more means of distance communication. The revised Directive still applies to intermediaries.

The revised Directive repeals the existing DMFSD while including relevant aspects of consumer rights regarding financial services contracts concluded at a distance within the scope of the horizontally applicable Consumer Rights Directive - that does not currently apply to financial services - in a dedicated chapter on distance contracts for consumer financial services. The new Chapter includes, amongst others, revised provisions on pre-contractual information, right of withdrawal and adequate explanations.

It is expected that the revised Directive, as provisionally agreed, ensures **that its provisions do not duplicate the ones of other EU texts already applying to the insurance (distribution) sector (prevalence of sectoral rules)**. This is an important principle for our sector. This means that the revised provisions will apply to the insurance (distribution) sector **only to a limited extent**, i.e. when the IDD, MiFID II, PEPP, Solvency II and other existing EU text applying to our sector do not contain similar rules to the revised ones (for example, when concluding an insurance contract at a distance, an intermediary will only have to comply with the IDD pre-contractual requirements and not with the ones of the revised DMFSD).

■ State of play

On 6th June 2023, a provisional agreement was reached between the European Parliament and the Council on the revised Directive concerning the marketing of financial services contracts – including insurance ones – concluded at a distance (DMFSD).

According to the Commission's press release "*the rules introduced in the revised directive will serve as a safety net for the financial services that are not covered by sector specific legislation. They include actions ensuring that withdrawing from a contract is as easy as signing it, that any consumer can have the right to talk to a real person instead of a machine when the explanation provided via online tools like chatboxes is not clear enough, clear guidelines for providing information before signing a contract, and special rules to protect consumers from being manipulated, when concluding financial services contracts online*".

As the text of the provisional agreement on the revised Directive is not public as yet, regarding the main provisions of the revised Directive, we refer to the Council's text and the EP IMCO report. These texts were quite similar and that explains why the trilogue was quite short (2 months).

Council's general approach

While the Council's general approach maintains the objectives of the Commission's proposal, it introduces several changes clarifying some points of the Directive. For example:

- To avoid any risk of lowering the level of protection for consumers in certain countries, the Council proposes **minimum harmonisation as regards pre-contractual obligations** which allow Member States to have stricter national rules than those established by the Directive.
- The Council **clarifies the scope of application and the safety net-feature of the Directive**, in particular for financial services that are excluded from other sectoral legislation or only partially covered by it.
- The Council applies **additional provisions of the Consumers Rights Directive to financial services contracts concluded at a distance**. These include provisions on telephone contracts, inertia selling (the sending of unsolicited goods or services to potential customers to make a sale), or the possibility for Member States to introduce language requirements in national law regarding pre-contractual information.
- Finally, the Council **extends the transposition period**, so the industry will benefit from an additional six months to make all the required changes to their IT systems.



EP's IMCO report

The IMCO Committee's report by **MEP Rapporteur Arba Kokalari** (EPP, SE) recommended that the EP's position adopted at first reading under the ordinary legislative procedure includes some changes, for example:

- Measures should be put in place to ensure **clear and responsible advertising of financial services products to prevent consumers from being deceived**, which may include measures to ensure that any person or company advertising a financial service product on social media platforms, is obliged to prominently label whether he or she is competent to do so, has the appropriate knowledge and competence to communicate on the financial services offered in compliance with applicable regulations and that it is clearly mentioned if there is any remuneration for this advertising.
- For distance contracts concluded by means of an online interface, the trader should ensure that the consumer can exercise his or her right to withdraw from the contract by using a withdrawal function. In order to facilitate this, **the withdrawal function should be labelled in a legible manner**, for example, containing the words "withdraw from contract" or a corresponding wording, be placed on the online interface in a prominent manner and be easily accessible to the consumer.

■ BIPAR's position / key messages

Together with its members, BIPAR has been active during the legislative process that led to the provisional agreement of the revised Directive. BIPAR's key recommendation to EU legislators was to ensure clarity regarding the prevalence of sectoral rules over the rules laid down in the revised Directive. In other words, to ensure that the revised Directive provisions do not duplicate the provisions of other EU texts applying already to the insurance sector.

BIPAR's other messages:

- **Scope:** The revised rules should not apply to off-premises financial services contracts and it should not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.
- **Proportionality:** the principle should be introduced in the Directive as its all-encompassing scope covers the entire financial sector which means that it applies to large institutions and SMEs alike.
- **Withdrawal button:** it should be made possible in the electronic interface to confirm that the button has not been pushed by mistake or by accident by the consumer. This is a very substantial move, which can have significant and negative consequences for consumers, such as for example the risk of being uninsured.

■ Next steps

The text of the political agreement needs now to be finalised at technical level. Council will have to first approve it, then send it to the Parliament's IMCO committee for a vote (end of June/early July) and then to the EP for a vote in plenary (October). The IMCO vote is expected to take place before the summer, while the final plenary vote is expected in October. All of this will be followed by a formal vote in Council (expected in October) and then the publication in the EU Official Journal (expected in October/November)

■ Links

- [Directive of 23 September 2002 concerning the distance marketing of consumer financial services](#)
- [Commission's proposal for revised rules on distance marketing of financial services](#)
- [Council's general approach](#)
- [EP IMCO report](#)
- [BIPAR's website: dossier on digitalisation](#)