

The [2002 Directive on Distance Marketing of Consumer Financial Services](#) (DMFSD) aimed at ensuring the free movement of financial services in the Single Market by harmonising certain consumer protection rules governing this area. It applied horizontally to any service of a banking, credit, **insurance, including those of insurance intermediaries**, personal pension, **investment** or payment nature. The Directive set out information obligations to be provided to the consumer prior to the conclusion of the distance contract (pre-contractual information), granted for certain financial services a right of withdrawal to the consumer, and banned unsolicited services and communications from suppliers.

■ Background

Following various consultations to which BIPAR responded, in May 2022 the European Commission adopted a [proposal for revised rules on distance marketing of financial services](#). The Commission's recent evaluation of the DMFSD indicated that its relevance had 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 Commission's proposal

The overall objective of the proposal remains unchanged: to promote the provision of financial services in the internal market while ensuring a high level of consumer protection. The proposal repeals the existing DMFSD but does not create a new legal instrument. Instead, it includes some relevant aspects of consumer rights regarding financial services contracts concluded at a distance within the scope of the horizontally applicable Consumer Rights Directive.

The Commission explains that the current DMFSD and the Consumer Rights Directive share a number of similarities. They both provide consumers with basic consumer rights, such as the right of withdrawal and the right to obtain pre-contractual information. They both regulate contracts concluded at a distance and

both apply horizontally, serving as general legislation. However, currently the Consumer Rights Directive excludes all financial services from its scope. The purpose of this proposal is to end the overall exclusion of financial services from the Consumer Rights Directive by broadening its scope to include financial services concluded at a distance. This means that a number of articles from the current Consumer Rights Directive will be applied to financial services sold at a distance. A dedicated chapter on distance contracts for consumer financial services will be included in the Consumer Rights Directive.

The proposal applies to insurance and financial intermediaries.

A full-harmonisation approach is proposed, meaning that the rules will be similar for all financial services providers and consumers across the EU as Member States will not be allowed to maintain or introduce national provisions other than those laid down in the Directive.

The **definition of "distance contract"** is not amended. It is still defined as *"contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded"*.

Like the DMFSD, the proposal also states that it *"does not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated the conclusion of distance contracts"*.

Proposed key provisions to be added to the Consumer Rights Directive in respect of the distance marketing of consumer financial services are the following:

- **Easier access to 14-day withdrawal right** for distance contracts for financial services (withdrawal button to facilitate consumers' exercise of the withdrawal right, notification regarding the withdrawal right to be sent to the consumer if the pre-contractual information is received by the latter less than a day from the conclusion of the contract).

- **Updated provisions regarding how and when pre-contractual information is to be provided, and what that information must consist of.** It is important to note here that in order to ensure legal certainty, the proposal states that, "*where another Union Act governing specific financial services contains rules on pre-contractual information or on the exercise of the right of withdrawal, only the respective provisions of those acts should apply to those specific consumer financial services unless provided otherwise in those acts*". In practice, this could mean, for example, that only IDD requirements regarding pre-information requirements would apply in case of distance marketing of IBIPs or non-life insurance products. However, as the IDD does not contain any provisions regarding the right of withdrawal, the updated provisions would apply in the case of distance marketing of IBIPs or non-life insurance products, in addition to the IDD requirements.
- **New rules to protect consumers when concluding financial services contracts online:** traders are required to provide adequate explanation (i.e. the required pre-contractual information, essential characteristics of the financial services/contract, effects of financial services on consumers (default payments, ...) so that consumers can assess whether the financial services are adapted to his/her needs). These requirements would also apply to explanations provided to consumers when using online tools such as robo-advice or chat boxes. Consumers would also be able to request human intervention if they are not satisfied with the use of online tools.

Here again, the three above-mentioned requirements would not apply where another EU legislation governing specific financial services (like the IDD) contain rules on the information to be provided to consumers prior to the conclusion of the contract.

The proposal contains an article on additional protection regarding online interfaces: traders cannot use the structure, design, function of their online interface in a way that could distort or impair consumers' ability to make a free and informed decision or choice.

- Enforcement: **stronger penalties** will apply to financial services contracts concluded at a distance in case of widespread cross-border infringements, with a maximum penalty of at least 4% of annual turnover.

■ BIPAR's position

Together with its members and based on its responses to the Commission consultations, BIPAR is drafting its position on the Commission proposal. In general, it is essential for BIPAR that the revised **Directive remains technology-neutral and becomes future-proof**. The principle of **proportionality** should be introduced in any revised DMFSD, in particular as its all-encompassing scope covers the entire financial sector, which means that it applies to big firms and SMEs alike.

BIPAR will also focus on the interaction on the proposal and other EU texts governing our sector such as the IDD, PRIIPs, MiFID II, etc. as well as on cross-border transactions (and its supervision), which is one of the objectives of the proposal.