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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT REPORT**

*Accompanying the document*

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**amending Directive 2011/83/EU concerning financial services contracts concluded at a  
distance and repealing Directive 2002/65/EC**

{COM(2022) 204 final} - {SEC(2022) 203 final} - {SWD(2022) 142 final}

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## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Directive 2002/65/EC on Distance Marketing of Consumer Financial Services ('the Directive' or 'the DMFSD') aims at ensuring the free movement of financial services in the single market by harmonising certain consumer protection rules governing this area. It applies horizontally to any present or future service of a banking, credit, insurance, personal pension, investment or payment nature contracted by means of distance communication e (i.e. without the simultaneous physical presence of the supplier and the consumer). The Directive sets out information obligations to be provided to the consumer prior to the conclusion of the distance contract (pre-contractual information), grants for certain financial services a right of withdrawal to the consumer, and bans unsolicited services and communications from suppliers.

The Directive has been subject to a **full-fledged Evaluation** and the Commission has presented its results in a **Staff Working Document**<sup>1</sup>. The evaluation examined whether the Directive has achieved its objectives and whether it is fit for purpose. It assessed the overall functioning and practical application of the Directive as well as its continued relevance in view of market and legal developments and the current needs of stakeholders. The main results of the evaluation can be grouped in two overarching conclusions: following the entry into application of the Directive, a number of EU product-specific legislative acts (e.g. the Consumer Credit Directive<sup>2</sup>) and EU horizontal legislation (the General Data Protection Regulation<sup>3</sup>) have been enacted. The impact of these more recently enacted pieces of legislation is that the Directive's relevance and added value has been subsequently eroded. Secondly, in those areas in which the Directive is still relevant, a number of developments (e.g. digitalisation) have impacted its effectiveness.

In this light, in the **New Consumer Agenda**<sup>4</sup>, the Commission stated its intention to prepare a proposal for the revision of the Directive in order to reinforce consumer protection in the context of the digitalisation of retail financial services. The **Council Conclusions on the New Consumer Agenda**<sup>5</sup> support the Commission's intention to revise the Directive, in particular with a view to strengthening consumer protection by implementing specific measures preventing consumer misinformation. The **European Parliament**<sup>6</sup>, through different legislative initiative resolutions, such as the resolution of 20 October 2020 with recommendations to the Commission on a "Digital Services Act: adapting commercial and

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<sup>1</sup> European Commission, Commission Staff Working Document Evaluation of Directive 2002/65/EC concerning the distance marketing of consumer financial services, SWD (2020) 261 final.

<sup>2</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

<sup>3</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>4</sup> European Commission, 2020, Communication: New Consumer Agenda Strengthening consumer resilience for sustainable recovery, COM/2020/696 final.

<sup>5</sup> Council of the European Union, 2021, Council conclusions on the New Consumer Agenda, p. 7.

<sup>6</sup> European Parliament, Briefing, New consumer agenda, available online at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679079/EPRS\\_BRI\(2021\)679079\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/679079/EPRS_BRI(2021)679079_EN.pdf).

civil law rules for commercial entities operating online”<sup>7</sup>, has called on the Commission to introduce new measures in areas in which the Directive still has value (e.g. transparency provisions and digital nudging). The Directive has been included in the **REFIT annex of the 2020 Commission Work Programme**, with a potential new legislative proposal depending on the outcome of the Evaluation and this Impact Assessment.<sup>8</sup>

Under the President’s Political Priorities of ‘**A Europe Fit for the Digital Age**’ and ‘**An Economy that Works for the People**’, the Commission has launched a variety of political and legislative actions (e.g. a Digital finance package<sup>9</sup>, the Capital markets union 2020 Action Plan<sup>10</sup>, the ongoing Retail Investment Strategy<sup>11</sup>) which have directly or indirectly impacted the Directive.

Alongside the different Commission political and legislative actions, over the past twenty years **distance marketing of consumer financial services has changed rapidly**. Financial providers and consumers have abandoned the fax machine, mentioned in the Directive, and since then new players with new business models have emerged, such as fintech which also includes technological developments in sectors such as insurance. The total transaction value growth of the Fintech sector<sup>12</sup> in Europe has been increasing on a yearly basis since 2017<sup>13</sup>. Consumers have more confidence in buying through digital tools<sup>14</sup> and are increasingly purchasing financial products and services online, leading established players to adapt their marketing and business practices. At the end of 2020, 57% of EU consumers were using banking apps or banking mobile site<sup>15</sup>. The impact of the COVID-19 pandemic and the related lockdowns has accelerated the use of online shopping in general<sup>16</sup>. This trend has also been noted in the recent European Banking Authority Report<sup>17</sup> with regards to financial

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<sup>7</sup> European Parliament resolution of 20 October 2020 with recommendations to the Commission on the Digital Services Act: Improving the functioning of the Single Market (available at [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0272\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0272_EN.html)) also contains points of interest for the purpose of this Impact Assessment.

<sup>8</sup> See Annexes to Adjusted Commission Work Programme 2020.

<sup>9</sup> See [https://ec.europa.eu/info/publications/200924-digital-finance-proposals\\_en](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en)

<sup>10</sup> See [https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan_en)

<sup>11</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation_en)

<sup>12</sup> Statista (2021). Total transaction value in EUR in Fintech sector (EU 27 Member States). Available at: <https://www.statista.com/outlook/dmo/fintech/eu-27>

<sup>13</sup> London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex (‘LE et al.’), 2019, *Behavioural study on the digitalisation of the marketing and distance selling of retail financial services*. Available at: [ec.europa.eu/info/sites/default/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/digitalisation\\_of\\_financial\\_services\\_-\\_main\\_report.pdf](https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf). <https://www.statista.com/outlook/dmo/fintech/europe#transaction-value> was also consulted.

<sup>14</sup> Consumer Conditions Survey: Consumers at home in the single market – 2021 edition: [https://public.tableau.com/views/ConsumerConditionsSurvey/S3\\_D5?%3AshowVizHome=no](https://public.tableau.com/views/ConsumerConditionsSurvey/S3_D5?%3AshowVizHome=no)

<sup>15</sup> Consumer Conditions Survey: Consumers at home in the single market – 2021 edition - Key highlights

<sup>16</sup> See Eurostat, *Online shopping ever more popular in 2020*, available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210217-1>. According to Eurostat, online shopping increased by 4 percentage points compared with 2019 (68% of internet users) and by 10 percentage points compared with 2015 (62%)

<sup>17</sup> European Banking Authority, September 2021, *The use of digital platforms in the EU’s banking and payments sector*, available at: [https://www.eba.europa.eu/sites/default/documents/files/document\\_library/News%20and%20Press/Communication%20materials/Factsheets/1019866/Use%20of%20digital%20platforms%20in%20the%20EU%20banking%20sector.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Communication%20materials/Factsheets/1019866/Use%20of%20digital%20platforms%20in%20the%20EU%20banking%20sector.pdf).

services and Eurostat data states that **12% of EU citizens have purchased at least one financial service online in 2020**<sup>18</sup>.

### **1.1. Objective and scope of this initiative**

The Evaluation concluded that the Directive has been **partially effective** in increasing consumer protection but of limited effectiveness in consolidating the single market due to barriers that are beyond its remit. In addition, **needs originally addressed by the Directive are currently addressed by other EU legislation** that significantly **overlap** with it. According to the Evaluation, 15-28 million EU consumers have benefited from key Directive provisions since its transposition in 2004, chiefly in the context of payment accounts, insurance and - to a lesser extent – pensions and consumer loans.

The initial **objective of this initiative was to gather and analyse the coherence of the Directive vis-à-vis the other overlapping EU legislation**. To do so, a mapping exercise of the relevant EU product and EU specific legislation was conducted<sup>19</sup> **to see whether all the relevant parts of the Directive have been taken over by the more recent EU legislation**. The initiative looked into whether the Directive could be safely repealed without creating any legal lacunae and without lowering the level of consumer protection, whilst ensuring the fostering of the single market for cross-border sale of financial products and services sold at a distance. **The aim of this initiative was to simplify the current legislative framework**, either by repealing it, or safeguarding only those parts that are still relevant and might be relevant in the future.

As a second step, after analysing the coherence of the Directive, the initiative aim was to consider **whether the residual ‘legally relevant’ parts of the Directive are still practically relevant (effective) for the stakeholders**. In other words, **the aim of this second step was to see whether the still relevant elements of the Directive played a significant role in terms of consumer protection and consolidation of the single market, especially in light of digitalisation**.

In this second step, the Directive’s **safety net feature was also analysed**. **The safety net means** that the rules of the Directive apply whenever (i) a new product appears on the market for which there is no EU legislation yet (e.g. virtual currencies are a financial service product not yet subject to legislation at EU level), (ii) the product-specific legislation does not provide the right(s) established by the Directive (e.g. the right for the consumer to withdraw from the contract within an established time-period is not laid down in the relevant insurance legislations), (iii) the product-specific legislation creates exemptions and the product falls outside the scope of application (e.g. consumer credit loans below EUR 200 are not covered by Directive 2008/48/EC - Consumer Credit Directive).

It is important to keep in mind that the Directive defines financial service in a wide manner, encompassing any banking, credit, insurance, personal pension, investment or payment service. Thus, the Directive captures traditional products such as a life insurance policy or the

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<sup>18</sup> See <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

<sup>19</sup> See Annex 6 (Interaction of the DMFSD with existing legislation and on-going initiatives).



opening of a bank account but also recently emerged products such as cryptocurrencies or consumers taking out a loan from a crowdfunding platform. Based on the survey conducted for the Evaluation Study the **most popular product purchased in the last 5 years by distance means was in the insurance sector (31%) followed by consumer loans (27%) and payment accounts (15%)**<sup>20</sup>. It must be kept in mind that the Directive applies only whenever the financial service is bought at a distance, meaning that there is no simultaneous physical presence of the consumer and the supplier. On the basis of the survey conducted for the Evaluation Study, more **than 60 % of the respondents mentioned that they used online or email** to buy a financial service; 26% concluded the distance contract via phone.

## 1.2. Interaction of DMFSD with existing legislation and upcoming initiatives

Within the EU legislative framework concerning financial products and services, the Directive acts as a *lex generalis*. Thus, the rules established by the Directive apply horizontally to any service of banking, credit, insurance, personal pension, investment or payment nature sold at distance. However, in case there is a sector-specific legislation in one of the mentioned financial services which establishes rules similar to or more extensive than those laid down in the Directive, the former (i.e. the sector-specific legislation) will apply (*lex specialis*).

The Directive entered into application in 2002 and was intended to cover the gap resulting from Directive 97/7/EC on the protection of consumers in respect of distance contracts<sup>21</sup>, since the latter excluded from its scope financial services. Directive 97/7/EC, which has in the meantime been repealed and replaced by Directive 2011/83/EU on consumer rights<sup>22</sup> (hereafter ‘the Consumer Rights Directive’), and the DMFSD share a lot of similarities in that they both provide consumers with basic consumer rights, such as the right of withdrawal and the right to obtain pre-contractual information. In this light, while the current version of the Consumer Rights Directive excludes from its scope financial services, the Consumer Rights Directive, in particular the provisions concerning distance contracts, and the DMFSD bear a number of similarities.

When the Directive entered into application, the legislative landscape concerning rules on financial services sold at a distance was sparse, meaning that the scope of application of the Directive’s rules was vast. However, **over the years, a large number of EU legislative acts have entered into application. At least fourteen (14) product-specific legislation have been enacted in the different sectors of financial service and at least five (5) horizontal legislations have had a direct pact on the Directive** (See [Table 24](#) in [Annex 6](#)). In addition,

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<sup>20</sup> See [Annex 8](#) Background information on financial services products bought at a distance.

<sup>21</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts - OJ L 144, 4.6.1997, p. 19

<sup>22</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council - OJ L 304, 22.11.2011, p. 64.



the **Commission continues to publish legislative proposals** which **impact** directly or indirectly the **Directive**<sup>23</sup>.

A closer look concerning coherence between the Directive and relevant EU acts and the resulting problems is provided in [Section 2.1](#). However, the current legislation and proposed amendments to the EU legislative framework point towards the need to study the concrete impact of these changes to the Directive, including the coherence between the different legislations and the remaining relevance, if any, for the Directive.

By way of example, in 2008, thus 6 years after the entry into application of the Directive, the Consumer Credit Directive (CCD) entered into force. The CCD established rules in the area of pre-contractual information and the right of withdrawal for those products (consumer loans) that fall within its scope. Thus, whenever the product falls under the scope of CCD, the rules of the CCD apply and not the rules of the DMFSD on pre-contractual information and the right of withdrawal. However, the CCD has a number of exemptions (e.g. loans below EUR 200 or above EUR 75 000). For those exempted products, the rules of the DMFSD apply. However, it has to be kept in mind that the CCD is under revision and a number of currently exempted products from the CCD might eventually fall under its scope, rather than the DMFSD, in a couple of years.

### **1.3 Peer-to-peer lending and this initiative**

The Explanatory Memorandum of the recent Proposal for a new Directive on consumer credit<sup>24</sup> refers to the protection of consumers granting credit through peer-to-peer lending platforms. In this context, it states that ‘the protection of consumers investing through these platforms, and the responsibilities of the platforms towards these consumers will be assessed in another context’. A preliminary assessment of these issues has, therefore, been carried out in the context of the present initiative, in particular since the Crowdfunding Regulation<sup>25</sup>, in Article 1(2)(a) excludes from its scope ‘project owners that are consumers’. A set of questions were submitted to stakeholders. While the protection of consumers granting credit through peer-to-peer lending platforms is not addressed by this initiative since this issue is too specific to fit the logic of the proposal and the horizontal nature of the Directive (the Directive captures all financial services, irrespective of the particular products or services), a number of preliminary findings have emerged. In general, national consumer authorities rarely, if ever, receive complaints in this area<sup>26</sup>. However, interviewed respondents suggest

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<sup>23</sup> For instance, the Commission published, in June 2021, a legislative proposal in the area of consumer credit<sup>23</sup> and, in September 2021, a legislative proposal in the area of insurance<sup>23</sup>.

<sup>24</sup> Proposal for a Directive of the European Parliament and of the Council on consumer credits COM/2021/347 final.

<sup>25</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, OJ L 347, 20.10.2020

<sup>26</sup> From the survey ran by the contractor in the context of the stakeholder consultations, 14 out of the 26 national authorities that replied were competent to deal with this issue. Out of these 14, ‘6’ authorities never received a complaint in this area, ‘4’ replied ‘rarely’ while ‘4’ competent authorities replied that they do ‘sometimes’ deal with consumer complaints on crowdfunding issues.

that natural persons making funds available for consumer credit via peer-to-peer platforms, such as crowdfunding platforms, might be insufficiently protected against misconduct. Hence, it was noted that complaints are more often received from consumers providing the funding, rather than the borrowers. In a majority of the respondents' Member States, there is currently no regulatory or effective supervisory framework to protect natural persons acting as lenders on such peer-to-peer lending platforms as such activity often falls outside the regulatory perimeter, or the application of the existing rules may be unclear. Interviewees agreed that disclosure requirements, such as simplified disclosure of credit agreement terms or borrower's risks, and a duty of care clause could be appropriate. Some respondents argued in favour of other safeguards, such as caps on amounts that can be made available for consumer credit on such platforms by natural persons. Others also supported rules for secondary markets in claims.

## 2. PROBLEM DEFINITION

### 2.1. What are the problems to be addressed by the initiative?

[Problem 1](#) concerns the current framework of the Directive. The key question under [Problem 1](#) is to understand the **scale of the problem** as a result of the substantial developments in the EU legislative framework: considering its *lex generalis* nature and all the subsequent post-2002 legislation, does it still have a meaning to exist (relevance) in its current format? How does the Directive interact (coherence) with the more modern EU legislation? What are the problems created by this lack of coherence and decreased relevance?

After examining the problems concerning the legislative framework (Problem 1), [Problem 2](#) and [Problem 3](#) concern those financial services for which parts of the Directive are still legally relevant. Thus, [Problem 2](#) and [Problem 3](#) concern only those parts of the Directive (i.e. those rules) that apply to certain financial services/products for which currently no sector specific legislation exist (e.g. currently no specific legislation in force on virtual currencies), the sector specific legislation whose rules do not cover the rules established by the DMFSD (e.g. right of withdrawal for certain insurance products) or whose sector specific legislation exempts certain products due to limitations to the scope of application (e.g. consumer loans below EUR 200 are exempted from the Consumer Credit Directive; thus the rules of the DMFSD would apply).

As depicted in [Annex 5](#), three overarching problems have been identified, each propelled by **three types of drivers**: a regulatory framework that fails to ensure legal certainty (problem driver 1), behavioural biases that are exploited by financial providers (problem driver 2), and barriers that hamper the possible increase of cross-border provision of financial products.

In turn, [Problem 1](#), [Problem 2](#) and [Problem 3](#) translate into **consequences for consumers** (detriment in case the product they bought is unsatisfactory, lack of sufficient trust to contract a financial service, both in home Member State and/or cross-border, and hence loss of welfare), and **businesses** (uneven playing field, compliance costs and loss of welfare due to the lack of realization of the potential of the internal market).

### 2.1.1. Problem 1: Lack of coherence and decreased relevance of the DMFSD due to overlap with product-specific and horizontal legislation

As indicated in [Annex 6](#), since 2002, the EU has been active in the area of financial services, adopting a large number of legislative acts. At the time of writing this impact assessment, there are two ongoing legislative proposals (Revision of the Consumer Credit Directive<sup>27</sup> and a Proposal for a Regulation on Markets in Crypto-assets<sup>28</sup>) and prospective revisions (e.g. to the Mortgage Credit Directive<sup>29</sup>, on-going work in the area of Retail Investment<sup>30</sup>) which are likely to have a direct impact on the legislative framework of the DMFSD. The legislative framework of the DMFSD is a **moving target**, as its relevance and coherence is linked to the adoption of new legislation. In this light, the **scale of this issue** is described in the Table 1.

Table 1. Legal Mapping of the Directive and overlaps with product specific legislation

|                          | Pre-contractual information   | Right of withdrawal   | Ban on unsolicited service  |
|--------------------------|---|---|---|
| <b>Banking products</b>  | Right of withdrawal on payment accounts   | Fully relevant  | Article 9 of the DMFSD was amended by Unfair Commercial Practices Directive |
|                          | Savings accounts  |   |   |
| <b>Consumer Credits</b>  | Consumer credits below EUR 200 and above EUR 75,000   | Consumer credits below EUR 200 and above EUR 75,000   |   |
| <b>Mortgages</b>         | Mortgages for Member States that opted to give this right under DMFSD and not Mortgage Credit Directive | Mortgages for Member States that opted to give this right under DMFSD and not Mortgage Credit Directive |   |
| <b>Insurances</b>        | Information on the right of withdrawal for investments covered by that right                            | Investments covered by article 6 of DMFSD   |   |
| <b>Personal pensions</b> | Fully relevant  | Fully relevant  |   |
| <b>Investments</b>       | Information on the right of withdrawal for investments covered by that right                            | Investments covered by article 6 of DMFSD   |   |
| <b>Payment services</b>  | Mostly non-relevant   | Mostly non-relevant   |   |

<sup>27</sup> COM(2021) 581 final, 2021/0295(COD).

<sup>28</sup> Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.

<sup>29</sup> See: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/mortgage-credit\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/mortgage-credit_en).

<sup>30</sup> See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation_en).

The table illustrates the seven (7) areas that fall under the definition of ‘financial services’ and represents the regulatory links (legal framework) between the Directive and these 7 areas with regard to the three basic consumer rights established in the DMFSD. The red colour signifies that the articles of the Directive are no longer relevant. Orange signifies that the product specific legislation is currently under review and the possibility of the Directive still being relevant is put into question. Green signifies that, from a regulatory point of view, the Directive is still relevant.

### **Ban on unsolicited services and communication**

Out of the three rights provided by the DMFSD, the articles concerning the ban on unsolicited services and communication **are nowadays irrelevant**. With regard to the ban on unsolicited communication, the e-Privacy Directive<sup>31</sup> and the General Data Protection Regulation<sup>32</sup> apply horizontally, thus also covering unsolicited communication in the area of financial services. With regard to the ban on unsolicited services, the Unfair Commercial Practices Directive<sup>33</sup> implemented in 2007 addressed this aspect and explicitly amended Article 9 of the DMFSD.

### **Right to obtain pre-contractual information**

Most of the product-specific legislation adopted after 2002 in the area of financial services have imposed the obligation on financial service providers to supply pre-contractual information to consumers. The content of information to be provided to consumers varies, depending on the specific EU legislation in question.

First, the overlap between the DMFSD and the product specific legislation means that the **relevance** of the DMFSD articles on pre-contractual information are **limited to those financial products which are exempted from the product-specific legislation** since in case of overlap the applicable rules are those laid down in the product-specific legislation. For instance, “buy now pay later” consumer loans of less than EUR 200 do not currently fall under the current Consumer Credit Directive. Thus, the obligations for financial providers to provide pre-contractual information in that case stems from the DMFSD. The DMFSD articles would also apply to those financial services products for which no product-specific legislation is currently in force, such as cryptocurrencies<sup>34</sup>.

Second, the overlap between the Directive and the product-specific legislation has led to practical issues. Both in the stakeholder consultation related to the Evaluation Study and in

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<sup>31</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

<sup>32</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>33</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

<sup>34</sup> See footnote 39 concerning a national judgment applying the DMFSD in the area of cryptocurrencies for failure to provide adequate pre-contractual information.

the Public Consultation related to this Initiative, stakeholders in the insurance sector pointed out that this overlap has led insurance providers to present two sets of pre-contractual information documents, one stemming from the insurance specific legislations and one stemming from the DMFSD. This amounts to unnecessary financial cost for the providers but also detrimental for consumers who, in this manner, suffer from information overload<sup>35</sup>.

### **Right to withdrawal**

While most **product-specific legislation** have introduced the right to obtain pre-contractual information, **not all have included the right of withdrawal**. For instance, in the banking sector, the Payment Accounts Directive (PAD)<sup>36</sup>, while providing extensive pre-contractual information obligations, does not establish the right to withdraw. Thus, the right of withdrawal in instances of a banking account bought at a distance, stems from the DMFSD. The DMFSD articles would also apply to those financial services products bought at a distance for which no product-specific legislation is currently in force,

### **Scale of the Problem & the Safety Net feature of the Directive**

In light of the [Table 24](#), [Figure 3](#) and [Figure 4](#) found in [Annex 6](#), it is safe to say that the regulatory relevance of the DMFSD has been in a **constant state of decline caused by post-2002 EU legislation**. In addition, the scale of this **problem appears to be growing** since, excluding the Proposal to Revise Solvency II<sup>37</sup>, the current European Commission proposals in different financial services overlap and reduce further the DMFSD's relevance.

The proposal concerning the **Revision of the Consumer Credit Directive intends to widen the scope to consumer loans below EUR 200 and above EUR 75 000**. The proposal for a Regulation on Markets in Crypto-assets will regulate an area which is currently subject to no specific regulation and hence, would fall under the DMFSD. These instances, just like the recently adopted Crowdfunding Regulation<sup>38</sup>, illustrate that **the DMFSD is further losing its relevance vis-à-vis different financial products**.

The lack of relevance of the DMFSD is also illustrated by the fact that it **refers**, in its recitals and in the operative part, to largely out-dated technologies, such as **fax machines, floppy discs, CD-ROMs, DVDs**.

The problem linked to the relevance of the DMFSD is further exacerbated by the fact that the provision regulating the relationship between the **DMFSD and the product-specific legislation is unclear**. First of all, the hierarchical norm setting out which legal provision

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<sup>35</sup> 16% of business associations, consumer associations and national authorities participating in the Evaluation study survey were of the opinion that the existing overlaps between the DMFSD and the product-specific legislation in the consumer credit loans sector were unjustified. The figure stood at 14% in regard to respondents who believe that the overlaps between the DMFSD and the product-specific legislation in the mortgage sector were unjustified.

<sup>36</sup> Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

<sup>37</sup> In the Proposal, the European Commission proposes to exclude small insurance firms from the scope of application of Solvency II, thus meaning that, if these excluded insurance firms provide insurance products at a distance, the DMFSD would apply.

<sup>38</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.



should apply is not laid down in the text. When the DMFSD does refer to the *lex generalis/lex specialis* relationship, it concerns only the right for pre-contractual information. In addition, as explained above this is still not sufficiently clear for certain financial providers, in particular in the insurance sector, since, **to be on the safe side, they provide two sets of pre-contractual information documents to the consumer.**

In addition, in the Public Consultation, national authorities and industry stakeholders stated that **certain definitions and concepts of the DMFSD require further clarification**, in particular ‘fully completed performance’ under Article 6(2)(c) and ‘concluded at the consumer’s request’ under Article 5(2) of the DMFSD.

**The view that the current DMFSD regulatory framework is losing its relevance is shared by all stakeholders.** While they disagree on how to solve the problem, the erosion of the relevance of the DMFSD is a given-fact.

However, **more than 70% of stakeholders** from all groups also agree that, while the relevance of the DMFSD has been reduced, the **safety net feature as a result of the horizontal scope of the Directive** renders the **DMFSD effective.**

Different stakeholders have provided **different examples of the use of the safety net feature of the DMFSD.** Financial providers explained that they reverted back to the DMFSD provisions when they were in doubt as to which legislation applies to cryptocurrencies. Another example, cited by both financial providers and public authorities, concerned the use of **digital on-boarding.** Due to the lockdowns related to the COVID-19 pandemic, instances of physical meetings in banks between consumers and providers was kept to a minimal. Thus, digital on-boarding of potential clients took place on a more regular basis. In such instances, financial providers, upon seeking the views of the relevant competent authorities, applied the DMFSD since the contract was being concluded ‘at a distance’. Public authorities have also cited other instances when they use the DMFSD, such as in the **area of investment in expensive wines and diamonds**, or certain **gift-cards** that fall outside the scope of PSD II, or current **loans below EUR 200** that fall outside the Consumer Credit Directive.

With regard to the consumer loan sector, the scientific researcher and most consumer organisations participating in the Public consultation noted that **most of the dangerous products for consumers on the market**, such as buy now pay later loans below EUR 200, **appeared** on the market thanks to **digitalisation** only **after the entry into force of the Consumer Credit Directive.** Thus, it is the DMFSD, rather than the Consumer Credit Directive, that provides, until the latter is revised, consumers with a minimum level of protection, in terms of pre-contractual information and a right of withdrawal. It was also highlighted that **the emergence of new products brought by digitalisation outpace the required time for the EU to legislate.** In this regard, the safety net in the DMFSD has been used to cover instances not foreseen by the product-specific legislation at the time of entering into force. The safety net feature of the DMFSD has also been applied by the **national**

**courts<sup>39</sup> vis-à-vis still unregulated products** (e.g. cryptocurrencies). The scientific researcher and consumer organisations who participated in the public consultation noted that financial products in the digital sphere tend to be complex for the average consumer to understand. Thus, the safety net feature of the DMFSD provides the minimum *ex ante* and *ex post* protection for the consumer whilst also providing the necessary trust to contract such innovative products

Public authorities cited the usefulness of the DMFSD as a catch-all instrument during investigations. Thus, for the same investigation, they cite and apply rules from both the product-specific legislation and the DMFSD. Nearly half of the financial service providers replying to the inception impact assessment highlighted the importance of the safety net. Industry representatives in the area of insurance and all consumer organisations point out that the safety net feature has, over the years, helped build **consumer trust**, especially since the right of withdrawal in the area of insurance stems in fact from the DMFSD. In addition, a number of EU based industry representatives noted that the safety net ensured a level playing field and cited the on-going entry into the financial services market by Bigtech companies<sup>40</sup>. For instance, Amazon is active in different areas of financial services and might, in the near future, develop products that do not fall under any product-specific legislation. Thus, the DMFSD would capture such products. The provision of financial services by Bigtechs has been on the Commission's radar for a number of years<sup>41</sup>. Over the years, Bigtechs, through their business models, have been able to process vast numbers of personal data processing activities and have deployed state-of-the art technological tools. As referred in the EU Digital Strategy 'these developments are changing the nature of risks to consumers, users and financial stability and they may also have a significant impact on competition in financial services'. In this light, it is worth recalling that the DMFSD is without prejudice to Regulation 2016/679 (the General Data Protection Regulation). Thus, the processing of personal data by Bigtechs falls under the scope of Regulation 2016/679, which already establishes rules and principles such as purpose limitation and data minimisation. However, with Bigtechs increasing their offers to consumer to buy financial services, both legislations can contribute to ensure that the consumer's personal data is safeguarded and that all financial service providers are subject to the same rules and regulations, thereby ensuring a level playing field.

### **2.1.2. Problem 2: Consumers taking out financial services by means of distance communication are not sufficiently protected and face detriment**

As a result of market, technological and behavioural developments that occurred after the adoption of the DMFSD, some consumers contracting financial services at a distance are not

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<sup>39</sup> Verona Court, Decision n°195 of 24 January 2017, available at: [https://www.diritto bancario.it/sites/default/files/allegati/tribunale\\_di\\_verona\\_24\\_gennaio\\_2017\\_n.195.pdf](https://www.diritto bancario.it/sites/default/files/allegati/tribunale_di_verona_24_gennaio_2017_n.195.pdf).

<sup>40</sup> See <https://www.cbinsights.com/research/report/amazon-across-financial-services-fintech/>

<sup>41</sup> See for instance Communication by the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Financial Strategy for the EU (COM/2020/591 final)



adequately protected from arrangements that will become unsustainable for them. Ill-suited products may cause detriment, such as debt spirals and over-indebtedness. The reasons for the lack of sufficient protection are multiple, stemming both from the consumer’s behavioural actions (e.g. heuristic decision making) and manipulative behaviour by the financial provider. This lack of protection causing consumer detriment cuts across the different rights provided by the DMFSD.

**Sub-problem 2.1.: Limited consumer awareness of key elements and costs of some financial services (e.g. pre-contractual information does not include how the info needs to be presented)**

Consumers may face detriment when purchasing financial services at a distance if they are not aware of key features of the services they purchase. In this light, the DMFSD obliges financial providers to provide, ‘in good time before the consumer is bound by any distance contract or offer’, pre-contractual information to the consumer so that the latter is in a position to choose the product that serves him best.

The Behavioural Study on the digitalisation of the marketing and selling of retail financial services highlights that the **lack of information provision at the pre-contractual stage**<sup>42</sup> and the **lack of time for consumers to analyse the information provided**<sup>43</sup> (22% of the respondents to the Evaluation Public Consultation stated that the time allocated was insufficient and felt under pressure to sign the contract, [chart](#) below), lead to a situation whereby **consumers do not understand the terms and conditions of the financial services they contract.**

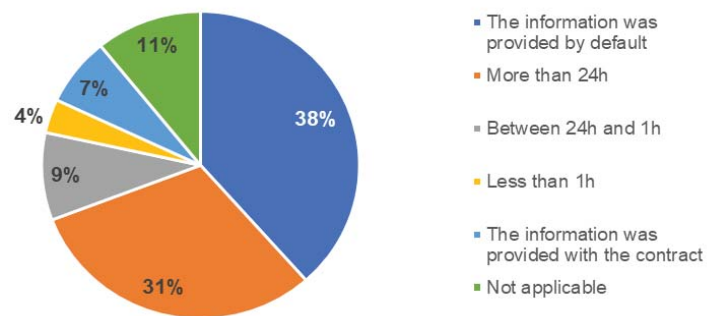


Figure 1. Amount of time to review the information about the offer and the provider before having to sign the contract<sup>44</sup>.

The reason for such incomprehension of key elements and costs can be multiple and may involve **information overload or information complexity** by the financial provider. In fact,

<sup>42</sup> The Study found that mandatory information being omitted at the pre-contractual stage as being “high” prevalence for most types of financial products, including various types of credit, travel insurance, savings, current accounts and payment services. London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex (‘LE et al.’), 2019, *Behavioural study on the digitalisation of the marketing and distance selling of retail financial services*. Available at: [ec.europa.eu/info/sites/default/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/digitalisation\\_of\\_financial\\_services\\_-\\_main\\_report.pdf](https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf).

<sup>43</sup> This has also been confirmed by the Stakeholders consultation. Consumer associations argued that the timing of disclosure is drafted in a too wide manner, since the DMFSD employs the generic term ‘in good time’, which in practice has resulted in the pre-contractual information being presented at the same time as the time of signature. See European Commission, 2019, *Evaluation of the Distance Marketing of Consumer Financial Services Directive (Directive 2002/65/EC) Summary report – public consultation*.

<sup>44</sup> IFC, 2020, *Evaluation of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services*, p.182. Available at [https://ec.europa.eu/info/sites/default/files/dmfspd\\_evaluation\\_final\\_report\\_2020.pdf](https://ec.europa.eu/info/sites/default/files/dmfspd_evaluation_final_report_2020.pdf).

according to a Report of a National Competent Authority<sup>45</sup>, **presenting the costs in a complex manner with specific legal jargon is a way for financial providers to ensure that consumers do not fully grasp the information they are provided.** This has been recorded in particular for the consumer loans market and the savings products market. These two markets represent, on the basis of the Evaluation study, 46 % of all sales carried out by distance selling in the past five years (Figure 5).

In this manner, the financial providers comply on paper with their pre-contractual obligations, but the aim and spirit of the law is not reached. Likewise, consumer organisations argue, and this is also documented in the Behavioural study, that, while the DMFSD obliges the financial providers to propose pre-contractual information, **its rules neither establish how ('the form') the information is to be proposed** (the DMFSD uses the term 'clear manner', but does not specify that it should be displayed 'prominently') **nor does it ensure that the information is fit to modern digital tools.**<sup>46</sup>

The same consumer organisations, in the consultations linked to this initiative, pointed out that setting up an obligation on Member States to establish an **independent comparison website could help consumers at the pre-contractual stage.** This idea is borrowed from the Payment Accounts Directive (2014/92/EU, 'PAD') which indeed establishes such an obligation on Member States. Through this comparison website the consumer would be able to obtain information on the payment accounts available on the market and thus make an informed decision. However, the recent **PAD Evaluation**<sup>47</sup> found 'that comparison websites are at very different levels of quality and functionality'. The Study noted that the 'introduction of the comparison table does not necessarily translate into a feeling of trustworthiness, impartiality and transparency'.

### **Sub-problem 2.2.: Sub-optimal use of the Right of withdrawal**

The right of withdrawal (Article 6 and 7 DMFSD), aims to provide consumers with a 'cooling-off period' (of 14 days, extended to 30 days for life insurance contracts) for most of the financial services purchased through distance means of communication. This allows consumers time to rethink and reassess the contract, as well as the opportunity to change their minds and terminate the contract without penalties for non-performance and without having to provide a reason. The right to withdrawal is especially important for financial services marketed sold at a distance, because digitalisation and the acceleration of decision-making processes could facilitate making wrong financial choices. From the Evaluation Study<sup>48</sup> Public Consultation, it emerged that **more than 90% of the consulted consumers indicated that having the right of withdrawal is important** (for 75% it is very important), **more than 85% of industry stakeholders consider it relevant and 100% of the national authorities**

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<sup>45</sup> Autorité de contrôle prudentiel et de résolution (ACPR), 2017, *Activity Report 2016 on Customer Protection*. Available at: <https://acpr.banque-france.fr/sites/default/files/media/2017/07/10/acpr-2016-part4.pdf>.

<sup>46</sup> 75% of consumer organisations that participated in the interview questionnaire for the supporting study stressed the need to render the provision of pre-contractual information fit for the digital devices.

<sup>47</sup> Deloitte, 2020, *Study on EU Payments Accounts Market*. Available at: <https://op.europa.eu/en/publication-detail/-/publication/0854f727-6117-11eb-8146-01aa75ed71a1/language-en>.

<sup>48</sup> European Commission (2019a).

**consider it relevant.** The Evaluation survey notes that up to 13% of the consumers surveyed were not made aware of their right to withdraw and that up to 20% of the consumers surveyed buying an insurance product were not fully informed of the extent of costs/charges associated in case that would have exercised their right of withdrawal. Considering that online sale of financial services is expected to grow, it is reasonable to expect that the number of EU citizens concerned by this sub-optimal use of the right of withdrawal will increase.

A special 2011 Eurobarometer investigating the extent of consumer empowerment showed that consumers' awareness of their rights in respect of cooling-off periods after engaging in a distance purchase tends, in certain market segment, to be low. In the case of car insurance sold through distance means, for example, **more than half of consumers do not have a clear understanding of their withdrawal rights**, with 27% believing (incorrectly) that they can cancel a contract and simply pay an administrative fee, 10% (incorrectly) believing they will not be refunded if they choose to withdraw from a contract, and 18% (incorrectly) believing they do not have the right to cancel a contract at all<sup>49</sup>. This finding is corroborated by data from the Evaluation Study and the Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services<sup>50</sup>. **The Behavioural Study found that existence of the right of withdrawal was not communicated to 39% of respondents.** The **Evaluation of the DMFSD**<sup>51</sup> confirmed this result and further shows that 54% did not receive information on the conditions for exercising the right to withdrawal. The study found that the problem was particularly prevalent in the money transfers market, where **53% of consumers are not informed on their right to withdrawal.**

Apart from the lack or inadequate informational provision of the right of withdrawal, **various commercial tactics** flagged by desk research are used by financial providers to circumvent potential revenue losses that can arise from withdrawals. For instance, providers may require consumers to make the **first payments after the standard 14-day cancellation period has elapsed**, for example within a month of receiving their contractual agreement. The aim is to shift the consumer's attention away from the timeframe set for cancelling to the timeframe set for making a first payment. By then, if the consumer wishes to withdraw, they will have missed the opportunity to do so. This practice is often discussed in the context of insurance products contracted by phone, where premium payments often begin one month after an agreement is sent to the consumer.

Another tactic is to make the **process complex and burdensome which can discourage or prevent consumers from using the right.** This has been included in the European Banking Authority Opinion on the DMFSD<sup>52</sup>. The question on how and whether the withdrawal was done according to the Directive has led, according to desk research conducted by the

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<sup>49</sup> See Special Eurobarometer 342 (2011).

<sup>50</sup> LE et al, 2019.

<sup>51</sup> IFC, 2020, p.74.

<sup>52</sup> European Banking Authority (EBA), 2019, *Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC*, p. 8. Available at: [https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf).

contractor carrying out the Support Study, to litigation before national courts, for instance in Estonia<sup>53</sup> and Germany<sup>54</sup>..

Among the most common complaints in relation to withdrawals from contracts, **nearly two out of five relate to consumers being subject to hidden charges or fees upon initiating the withdrawal process**. About one in three consumers describe providers' miscalculations that would have shortened the withdrawal time window and potentially prevented them from exercising their right to withdraw.

In short, the **lack of awareness of consumers on the possibility of benefit** from the mentioned right at the moment of the purchase, **the refusal by the provider to accept** the withdrawal and **experience of bureaucratic difficulties** faced by consumers while exercising their right lead to a sub-optimal use of the right of withdrawal.

### **Sub-problem 2.3.: New market practices exploiting patterns in consumer behaviour**

The Behavioural study provides a list of examples concerning new market practices. Digitalisation has facilitated the emergence of new distribution channels on the market, often providing opportunities for financial providers to benefit from gaps in the regulatory framework. In fact, since the DMFSD does not explicitly define how pre-contractual information should be presented, providers can engage in practices at advertising and at pre-contractual stage to nudge consumers into purchasing their services. Such **market practices come in different ways and means**. The Behavioural study provides 5 overarching practices: (i) the way in which information is provided (e.g. benefits added while costs hidden or given less prominence), (ii) features that may accelerate the decision to buy the product (one-click products), (iii) the actual design of the offer (pre-ticked boxes), (iv) consumer targeting and personalisation (v) tools made available to consumers to assist their decision-making process). These practices are then further broken down into specific actions taken by providers to exploit patterns in consumer behaviour (see [Table 25](#) in [Annex 7](#)). In this regard, it is worth noting that all the **instances mentioned in the table are problematic**. For instance, a **mystery shopping exercise<sup>55</sup> in the area of payment services found that 56% of consumers looking to transfer money experienced hardship in finding information on the terms and conditions**. The technique of **obscuring information** has also been noted with regard to the selling of payment protection insurance (PPI).

Information on financial services is often complex and difficult to understand for the average consumer, and especially for consumers in a situation of vulnerability. This is exacerbated when there is no physical contact between the financial service provider and the consumer.

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<sup>53</sup> Tartu County Court, decision no 2-17-119750 of 9 May 2018, available at: <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=231149362>

<sup>54</sup> Bundesgerichtshof, XI ZR 520/16 of 03.07.2018: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=86778&pos=0&anz=1>; Bundesgerichtshof, XI ZR 183/15 of 24.01.2017: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=78004&pos=0&anz=1>

<sup>55</sup> European Commission (2020).

This is why some NGOs and consumer organisations advocate for the creation of basic necessary financial services with simple standardised features, to avoid financial exclusion.<sup>56</sup>

With regard to distorting consumer decision-making through ways of how information is presented, a study by Invesco<sup>57</sup> found that consumers in the pension market are more aware of positively framed messages than negatively framed messages. The study showed that **64% of consumers were more likely to read a statement encouraging them to manage their pension compared to a statement warning them against failing to manage**. Considering that the DMFSD is still of great relevance in the pension sector, namely that the right of pre-contractual information and right of withdrawal stem from it, ensuring that consumers receive clear and easily comprehensible information is important.

With regard to techniques that help accelerate the decision to buy a certain product, **the Behavioural Study<sup>58</sup> found that fast purchasing processes** (i.e involve two or three clicks) **led consumers to choose the best loan for them only in 36.09% of the cases**.

With regard to techniques concerning the actual design, the instance of **bundling was labelled as ‘rather detrimental’ to consumer welfare**. The average rating of this practice scored as relatively high (compared to other practices covered) and above 3, meaning that it was perceived rather detrimental.

With regard to **targeting and personalisation**, the Behavioural Study notes that **fewer than 10% of consumers have no concerns** whatsoever when they are the target of personalised offers. The risk concerning such practices is **price discrimination**, which may be detrimental to the consumer. In addition, a horizontal issue mentioned by consumer organisations linked to personalised offers concerns advice provided by robots. Robo-advisors are online platforms that use artificial intelligence or algorithms to process information on clients’ investment preferences, risk tolerance and loss-absorption capacity, to determine an investor profile and make a personalised and often product-specific investment recommendation<sup>59</sup>. Better Finance, in their Annual Robo-Advice Report described, respectively, the issues concerning transparency and suitability offered by robots as ‘disappointing’ and ‘alarming’. The European Commission Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG), in its Final Report to the European Commission<sup>60</sup>, refers to used cases of robo-advice in the financial sector (e.g. in brokerage and investment management or in insurance products and services) and calls on the Commission to look into this issue.

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<sup>57</sup> Invesco, 2020, *Beyond the defaults*, p. 24. Available at: <https://www.nestinsight.org/wp-content/uploads/2020/11/Beyond-the-defaults.pdf>.

<sup>58</sup> LE et al, 2019.

<sup>59</sup> Better Finance, *Robo-Advice 5.0: Can Consumers Trust Robots?*, December 2020, available at: <https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>.

<sup>60</sup> European Commission, Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG): *30 Recommendations on Regulation, Innovation and Finance - Final Report to the European Commission* - December 2019.



### 2.1.3. Problem 3: The competitiveness of the internal market for financial services sold by means of distance communication is not fully achieved due to barriers to the provision of financial services across borders

One of the two main objectives of the DMFSD is to foster cross-border sales of financial services. Figures pre-DMFSD illustrated that the lack of EU action in this area led to consumers not trusting services from other Member States. According to the Eurobarometer 205 survey<sup>61</sup>, only a small fraction of respondents would consider purchasing a financial product or service from another EU<sup>62</sup>. The introduction of the provisions on pre-contractual information obligations, right to redress, ban on unsolicited services and communication and the right of withdrawal in the DMFSD was meant to address consumer concerns and trigger the provision of cross-border financial products.

While according to Eurostat's estimates around 12% of the individuals in the EU have, in 2020, purchased at least one financial service online in the previous 3 months, **the share of EU citizens making cross border purchases remained relatively low in 2005-2020**. According to the Eurobarometer surveys, in 2011<sup>63</sup> 94% of respondents that had purchased financial products reported not having purchased these products from another Member State, while in 2016<sup>64</sup> this share stood at 92%. According to the Eurobarometer surveys, the most common financial service bought between 2003 and 2016 from another Member State were **current bank accounts (3% in 2016)**. The other financial services were credit cards, car insurance and investment funds, shares or bonds, all with an average 1% of respondents reportedly contracting at least one of those products from another Member state in 2016.

The reasons for such figures are the result of a number of **barriers** that consumers and businesses face.

On the **consumer-side perception**, emotional, cultural and language barriers, such as consumer preferences for domestic products, informational friction and a lack of trust or confidence.<sup>65</sup> The lack of confidence may be the result of perceived problems associated with cross-border transactions, such as websites being blocked or not being able to finalise a transaction<sup>66</sup>.

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<sup>61</sup> Special Eurobarometer 205.

<sup>62</sup> According to the Eurobarometer survey, 28% of respondents were concerned about not receiving clear or sufficient information on the product or service purchased from another EU Member State, 23% expressed a concern about the possibility of fraud or crime, 22% were concerned about possible language barriers affecting the purchase of the product or service, and 15% believed that there is less consumer protection in other EU Member States.

<sup>63</sup> Eurobarometer 373 (2011).

<sup>64</sup> Eurobarometer 446 (2016).

<sup>65</sup> The Evaluation's Public Consultation indicated as main reasons for not contracting financial products beyond their border: uncertainty about their rights or where to turn to get redress in case of a problem (about 38%); they are satisfied with the services offered in their country (28%); they prefer face-to-face contact (24%); language barriers (15%).

<sup>66</sup> According to the Consumer survey prepared by the contractor for the DMFSD Evaluation, the most common experience for those consumers that tried to purchase financial services in another Member State was that they were redirected to a website that was specific to the country where they live (29%) or they could not access the website (19%). In addition, according to a study of the French-Germany ECC on the European insurance market (Franco-German ECC, 2014, *Der europäische Versicherungsbinnenmarkt, Grenzüberschreitende Versicherungsverträge: Abschluss oder Ausschluss*, available online: <https://www.cec-zev.eu/fileadmin/Media/PDF/publications/Etudes->

From the **business side**, industry stakeholders consulted for the Impact Assessment Support Study indicated a number of barriers that are preventing them from offering services cross-border, including lack of demand (particularly in the banking industry); providers generally prefer serving markets in which they are physically established; entrance costs (for example, due to language barriers); different tax regimes and other regulatory barriers such as the lack of common rules on services and contracts.

**Differences in the way the DMFSD was transposed at national level due to the regulatory choices offered to Member States** (e.g. third paragraph of Article 6(1), Article 7(2) DMFSD) and the **lack of clarity on when the DMFSD applies and when the product-specific legislation** applies have also been cited as barriers to cross-border expansion by industry stakeholders and public authorities in the stakeholder consultation to this initiative.

However, a recent European Banking Authority (EBA) report<sup>67</sup> stresses that there appears to be widespread use of digital platforms<sup>68</sup> to market and distribute payment services, credit products (including short-term unsecured loans and mortgage products) and investment products, and it should increase. This is expected to increase cross-border provision of financial services. This is confirmed by the desk research linked to this Initiative, which indicates that digitalization, the **entrance of new players** (e.g. FinTechs), **new services** (e.g. P2P lending) and the use of **new channels** (e.g. mobile apps) will continue to grow in the coming years. Just as an example from the banking sector, according to a 2018 European Banking Federation survey, 90% of the banks surveyed highlighted that digitalization was their main priority.

In this light, the revision of the rules concerning financial services will help overcome a number of the barriers mentioned above, including entrance costs on the business side and, on the consumer side, will help increase consumer trust and confidence in buying services cross-border. However, this Initiative will not be able to overcome issues related to geo-blocking or emotional, cultural and language barriers.

In addition, the DMFSD, through its **safety net**, **plays an important part in ensuring a level playing field** for all competitors providing financial services. In fact, 65% of the industry stakeholders consulted during the preparation of the Evaluation Study believe that the safety net feature ensures that future products, that might not be yet subject to product specific legislation, would at least be subject to the rules of the DMFSD. This is shared too by the majority of the consumer organisation replying to the survey ran by the contractor working on the Support Study. In this regard, the Directive creates a level playing field since it ensures a minimum set of rules applies to all current and future services and providers, thereby preventing unfair competition from providers exploiting legal loopholes due to a lack of product-specific legislation.

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[Rapports DE/Studie\\_Versicherungsbinnenmarkt-FINALE.pdf](#)) buying insurance products was only possible on 47% of the insurance websites, and it was possible in only 9.7% of the cases to subscribe to these contracts when living in a different country.

<sup>67</sup> EBA, Report on the use of digital platforms in the EU banking and payments sector, September 2021.

<sup>68</sup> Please note that the definition of 'digital platform' adopted for the report



## 2.2. What are the problem drivers?

### Driver 1: Lack of legal clarity

When the Directive was adopted, the EU *acquis* in the area of financial services was limited. However, over the years the progressive adoption of EU rules in the different financial services has led to issues of coherence with the product specific legislation. The sources driving this lack of legal clarity can be attributed to:

(a) the lack of a clear hierarchical provision in the current DMFSD setting out the *lex generalis/lex specialis* relationship between it and the product-specific or horizontal legislation. In fact, nearly half of the business associations and company organisations responding to the public consultation rated the issue of over-lap concerning the provision on pre-contractual information and right to withdrawal as occurring often or on a daily basis. In addition, the issue of overlapping legislations creating legal uncertainty has been reported in different studies<sup>69</sup> and the figure in the Evaluation study stating that half of the position papers received flagged the overlap issue was experienced during the preparation of this initiative.

(b) the fact that the DMFSD uses vague terms ‘in good time’ in Article 3 DMFSD, ‘fully completed performance’ in Article 6(2)(c) DMFSD and that while it is generally technological neutral in that it applies regardless of the technology used by the financial providers, it still refers to outdated technologies (e.g. floppy disk, fax). In fact, according to the Evaluation survey, only 1% of consumers used a fax machine during the period 2013-2018 to buy at a distance a financial product.

### Driver 2: Developments in consumer behaviour, often exploited by providers, making regulatory framework inadequate

Over the past twenty years consumer behaviour has evolved<sup>70</sup>, fuelled by the spread of the internet and the appearance of mobile devices. In fact, the Behavioural Study notes that consumers nowadays prefer a more direct and faster conclusion of contracts in the area of financial services. The Support Study accompanying this Initiative, highlights in the analysis of the consumer journey, consumers biases, such as anchoring or herd behaviour, which may trigger consumer detriment and points out that the Directive does not adequately address such behaviour. For instance reference is made to practices by financial service providers which prey on the consumer’s desire to buy a product in a fast manner. In this context, the provider promotes its products by saying that, for instance, a loan can be provided in less than 15 minutes or through just one-click. Often, the loan agreement that the consumer buys would turn out not to be the ideal one.

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<sup>69</sup> For instance, LE et al. (2019); CEPS (n.d.) *The Future of Retail Financial Services What policy mix for a balanced digital transformation?*. Available at: <https://www.ceps.eu/system/files/TFRFutureFinancialServices.pdf>; OECD, G20/OECD Policy Guidance Financial Consumer Protection Approaches in the Digital Age. Available at: <https://www.oecd.org/finance/G20-OECD-Policy-Guidance-Financial-Consumer-Protection-Digital-Age2018.pdf>; European Banking Opinion: Opinion on disclosure to consumers of banking services through digital means [https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf).

<sup>70</sup> LE et al. (2019).

### **Driver 3: Emergence of new distribution channels and financial services due to increased digitalisation**

Digitalisation has refashioned the relationship between the consumer and the financial provider. It has led established players to adapt their marketing and business practices and fostered the entry into the market of new players with new business models (e.g. fintech firms). In addition, these new channels impact also the quality of the information the consumer receives at pre-contractual stage (e.g. the provision of pre-contractual information based on the DMFSD for a mobile phone screen may not necessarily empower the consumer). For instance, a consumer needs to swipe around thirty times in order to read all the pre-contractual information on his mobile device. In addition, new financial service products have appeared since 2002, across the different financial services sectors, such as buy now pay later credits or Amazon selling insurance products online in Germany.<sup>71</sup>

#### **2.3. How will the problem evolve?**

**The concerns linked to the evolution of the Problem 1 will continue to increase, in the sense that the decline of the relevance of certain articles of the DMFSD is expected to persist and the issues of coherence with the other EU legislation are expected to increase.** The relevance is expected to decline since a number of products currently falling under the DMFSD should, once the revised Consumer Credit Directive and Markets in Crypto-assets Regulation<sup>72</sup> enter into application, be regulated by the latter legislations. There is no indication that the Commission will not use its right of initiative in the area of financial services and thus future legislation in the area of application of the DMFSD may be expected. More product-specific legislations in the future also mean that due to the lack of a clear hierarchical norm in the DMFSD, more issues of duplication and legal uncertainty may be expected. Not intervening will also continue to render certain parts of the DMFSD framework obsolete, in the sense that references to outdated technologies will continue to feature and the articles on unsolicited communication and on unsolicited services which are already superseded by more recent EU legislation will continue to feature.

In addition, **the evolutions and disruptions to the market brought by the digitalisation of the financial services will continue.** In fact, Eurostat<sup>73</sup> estimates that in 2020, around 12% of the individuals in the EU have purchased at least one financial service online. The increase in the number of individuals who have purchased financial services online from 2015 to 2019 has been of 5 percentage points<sup>74</sup>. Even though, as explained in the Directive's Evaluation, in the last years the share of consumers reporting problems across various financial services has decreased, with more and more consumers purchasing financial services at distance, the volume of problems would increase.

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<sup>71</sup> European Insurance and Occupational Pensions Authority (EIOPA) - *Consumer Trends Report 2019, 2020*, available at: [https://www.eiopa.europa.eu/document-library/consumer-trends-report/consumer-trends-report-2020\\_en](https://www.eiopa.europa.eu/document-library/consumer-trends-report/consumer-trends-report-2020_en).

<sup>72</sup> Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM/2020/593 final.

<sup>73</sup> Eurostat (2021), Digital economy and society. Financial activities over the internet (2020 onwards), available at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc\\_ec\\_ifi20&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_ec_ifi20&lang=en).

<sup>74</sup> Ibidem.

At the same time, the FinTech sector has had considerable transaction value in 2020<sup>75</sup>. **New products like Buy Now Pay Later schemes**, i.e. interest free short term credits to spread payment of retail goods currently covered by DMFSD but not by sector-specific legislation, have been continuously growing in EU countries for several years. But also outside the EU: in the UK the unregulated Buy Now Pay Later market more than trebled in size in 2020<sup>76</sup>, and in the US it faced massive growth due to COVID-19 is expected to triple by 2024 (from USD 39 billion in 2020)<sup>77</sup>.

The further digitalisation of the financial services sector also implies the possible emergence of more complex financial services/products, increased speed with which consumers can sign a contract and purchase a financial service (e.g. speedy, or ‘one-click’ products) and more sophisticated tools to better influence and shape consumer behaviour (e.g. using ‘Big Data’ to personalise communications and offers, giving prominence solely to positive reviews, or using influencer marketing).

**Further digitalisation could also lead to increased cross-border purchases of financial services.** According to the Consumer Conditions Survey 2021, in 2020 27% of EU consumers purchased a good or a service from a provider located in another EU country. This represents an increase of 9 percentage points since 2014<sup>78</sup>.

The consequences of the current problems and the possible evolution impacts the Directive’s two main objectives, namely ensuring a high level of consumer protection and fostering the provision of cross-border financial services. In fact, from the consumer side, the consequences of the current and future problems are that consumers who have suffered detriment (for instance, bought through digital means a loan that was not fit for him/her) have less trust in the market. On the other hand, consumers, because of the problems and problem drivers explained above, might not have trust in buying a financial service at a distance in the first place. With regard to the objective of fostering the provision of cross-border financial services, the over-lap issue has caused unnecessary compliance costs (e.g. providing two sets of pre-contractual information documents) and the current and future barriers has led and will lead to loss of welfare since opportunities are not taken up.

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<sup>75</sup> Statista (2021), *Total transaction value in EUR in Fintech sector* (EU 27 Member States). Available at: <https://www.statista.com/outlook/dmo/fintech/eu-27>

<sup>76</sup> Financial Conduct Authority, *The Woolard Review - A review of change and innovation in the unsecured credit market*, 2021, available at <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>.

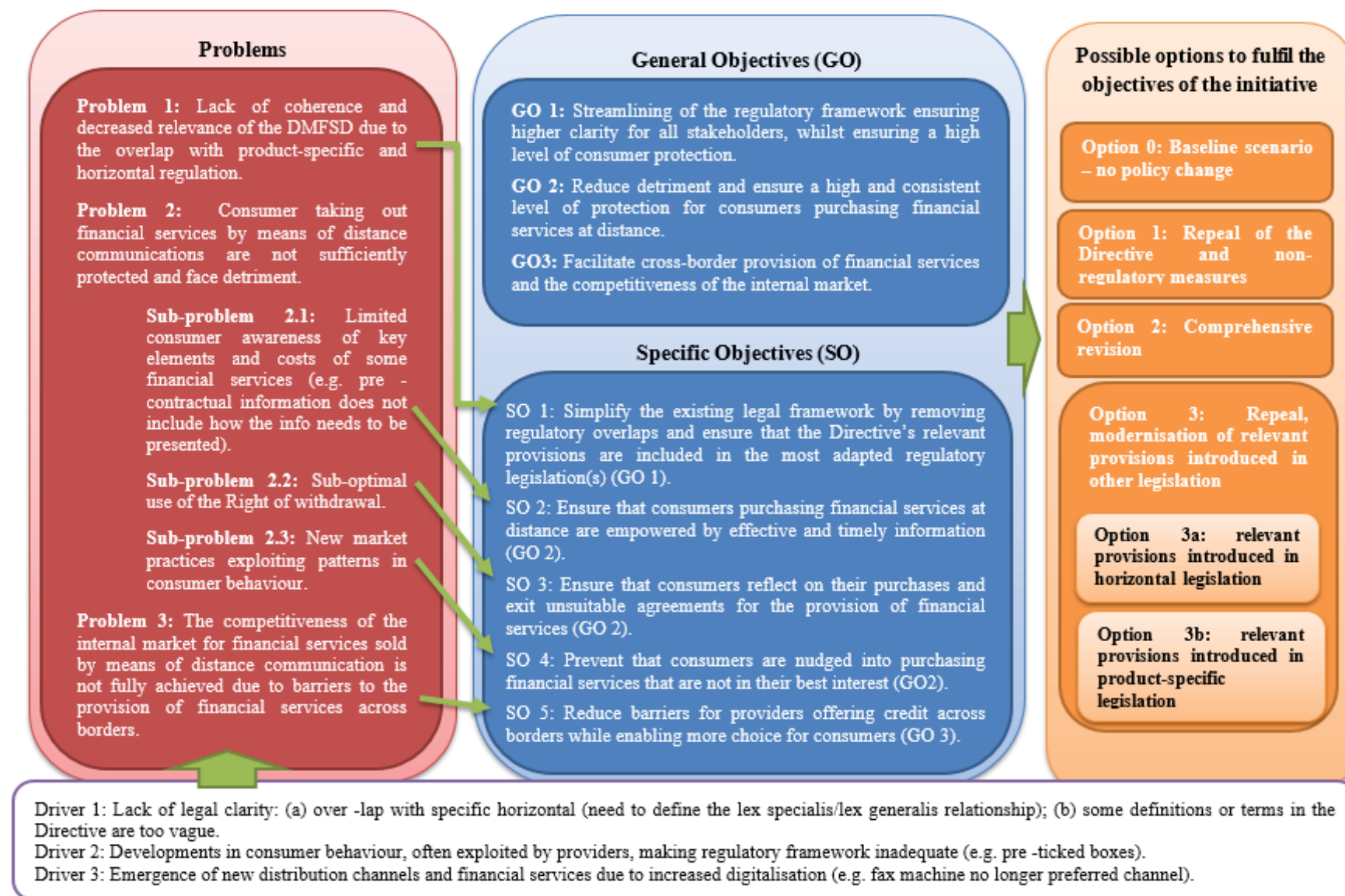
<sup>77</sup> Mercatory Advisory Group, *Buy Now, Pay Later: Gaining Scale and the Disrupting Status Quo in Lending*, 2021, available at <https://www.mercatoradvisorygroup.com/Reports/Buy-Now--Pay-Later--Gaining-Scale-and-the-Disrupting-Status-Quo-in-Lending/>.

<sup>78</sup> See [https://ec.europa.eu/info/sites/default/files/ccs\\_ppt\\_120321\\_final.pdf](https://ec.europa.eu/info/sites/default/files/ccs_ppt_120321_final.pdf).

## 2.4. Intervention logic

Figure 2 below illustrates the three problems inflicting the current Directive (column in red labelled ‘Problems’) and the three drivers (horizontal box at the end of the figure labelled) that are the source for the three identified problems. The problems and the problems drivers have been explained in Chapter 2. As will be explained in the next chapters, in particular Chapter 4, this Initiative pursues 3 general objectives which can then be further broken down into 5 specific objectives (column in the middle of the figure coloured in blue). These 5 specific objectives are linked to the respective three identified problems. The column on the right (coloured in orange) proposes the three options identified as possible options to fulfil the objectives of this initiative (they are further explained in Chapters 5 till 8). In short, the three options propose a set of measures that aim to address as best as possible the general and specific objectives of this initiative that, in turn, address the problems inflicted to the Directive.

Figure 2. Intervention logic



### **3. WHY SHOULD THE EU ACT?**

#### **3.1. Legal basis**

The Treaty on the Functioning of the European Union (TFEU) confers upon the EU the competence to adopt measures for the establishment and functioning of the internal market (Article 114 TFEU). More specifically, according to article 114(1) TFEU, the EU can adopt measures for the approximation of Member States rules and, pursuant to article 114(3) TFEU, with regard to consumer protection the EU ‘will take as a base a high level of protection’.

Article 169(1) TFEU, relating to consumer protection, states that to promote the interests of consumers and ensure a high level of consumer protection, the EU shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves to safeguard their interests. Article 169(2) TFEU specifies that these objectives can be reached through measures adopted pursuant to Article 114 TFEU in the context of the internal market completion.

This is the legislative approach taken also for the adoption of the DMFSD in the field of distance marketing of financial services to consumers. The objectives set out in Article 169 TFEU are meant to be achieved through Article 114 TFEU, which serves as the legal basis for the possible revision to be carried out through this initiative.

Accordingly, Recital 1 of the DMFSD states that ‘[i]t is important, in the context of achieving the aims of the single market, to adopt measures designed to consolidate progressively this market and those measures must contribute to attaining a high level of consumer protection, in accordance with Articles 95 and 153 of the Treaty’. Recital 2 of the DMFSD further outlines that ‘[b]oth for consumers and suppliers of financial services, the distance marketing of financial services will constitute one of the main tangible results of the completion of the internal market’.

#### **3.2. Subsidiarity: Necessity of EU action**

Since 2002 the number of EU Member States has significantly increased and the internal market has thoroughly expanded, making even more relevant the consequences arising from its malfunctioning. The legal framework for retail financial services has evolved since 2002, including through the development of product-specific legislation and horizontal legislation.

This, coupled with the gradual creation of the Capital Markets Union (CMU) – started in 2015 and boosted through the actions detailed in the new CMU plan adopted on 24 September 2020, increases the necessity of a revision of the DMFSD. Integrating national capital markets into a unified EU single market, making the EU a safer environment to invest and reducing obstacles to make financing accessible to European companies and households require an update of the DMFSD to fully benefit from the advantages of distance marketing of financial services without reducing consumer protection.

The development of robo-advisors and online trading platforms is an example of how distance marketing can now take different forms as compared to the past. Considering the changed scenario, a revision of DMFSD is justified. Considering these new distribution channels, the cross-border element is expected to increase and thus this Initiative will ensure



the establishment of rules that will strengthen the cross-border element through harmonised rules.

### **3.3. Subsidiarity: Added value of EU action**

In light of the situation as developed over the past two decades, improving the current regulatory framework can only be achieved at EU level. The EU added value of doing so would be to bring a clearer legislative framework that ensures legal certainty, achieved through more harmonisation.

In the retail financial services field, harmonisation in financial regulation aims to protect the financial system from market failures whose effects can spill over across the EU. In fact, regulatory frameworks providing consumers with different levels of protection in some Member States could create negative externalities possibly affecting also market participants based in other Member States. It is key to increase consumers' trust in distance marketing of financial services by rising the available legal safeguards within a harmonised context.

Rules concerning distance marketing are meant to favour cross-border provision of financial services and FinTech innovations in turn can further facilitate the provision of financial services from a distance. Finally, the revision of the DMFSD aims at addressing those shortcomings identified by the Evaluation, with a view to better achieving the objectives of the Treaties – namely enhancing consumer protection while favouring the conclusion of contracts from a distance, thereby further integrating the internal market for financial services.

In conclusion, there are two main reasons why the EU should act, in particular to foster the cross border offering of financial services. First, digitalisation is creating a dynamic through which BigTechs may become increasingly active in financial services. The possibility of BigTechs offering financial services cross-border leads to opportunities and risks; opportunities in the sense that BigTechs can scale up rapidly and thus offer products across borders in a fast manner; risks in the sense that BigTechs can leverage their dominance and, for instance, engage into product tying or bundling or behave in a way that is not data protection friendly. Second, the Directive offers the EU with the chance to address such opportunities and risks, especially since the Directive provides a wide definition of the term 'financial service', thus covering all possible financial sectors. Addressing such risks leads to two tangible benefits: (i) Equal playing field - ensuring that current or future financial services offered by BigTechs are subject to the same regulation as traditional financial services. One of the main feature of the Directive is the 'safety net' feature, meaning that its provisions apply also to products that appear on the market for which no product-specific legislation exists yet (e.g. cryptocurrencies). The safety net feature in the context of cross-border sales of products and services is appreciated in particular by traditional financial service providers; (ii) Consumer trust: the fact that consumers are provided with basic rights (pre-contractual information & right to withdrawal) increases trust and this leads to more cross-border purchases of financial services. In light of the above, EU intervention is warranted both for current and future products.



## 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

### 4.1. General objectives (GOs)

In line with the original objectives of the Directive, the general objectives of this Initiative are:

- GO 1: Streamlining of the regulatory framework ensuring higher clarity for all stakeholders, whilst ensuring a high level of consumer protection.
- GO 2: Reduce detriment and ensure a high and consistent level of protection for consumers purchasing financial services at distance.
- GO3: Facilitate cross-border provision of financial services and the competitiveness of the internal market.

### 4.2. Specific objectives (SOs)

|      |   |
|------|---|
| GO 1 | SO 1: Simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive's relevant provisions are included in the most adapted regulatory legislation(s) ( <a href="#">problem 1</a> )  |
| GO 2 | SO 2: Ensure that consumers purchasing financial services at distance are empowered by effective and timely information ( <a href="#">problem 2.1</a> )<br>SO 3: Ensure that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services ( <a href="#">problem 2.2</a> )<br>SO 4: Prevent that consumers are nudged into purchasing financial services which are not in their best interest ( <a href="#">problem 2.3</a> ) |
| GO 3 | SO 5: Reduce barriers for providers offering financial services across borders while enabling more choice for consumers ( <a href="#">problem 3</a> )   |

## 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

*Table 2. Summary of the policy options assessed*

|   |  |
|---|--|
| <b>Option 0: Baseline scenario – no policy change</b>   |  |
| <b>Option 1: Repeal of the Directive and non-regulatory measures</b>                          |  |
| <b>Option 2: Comprehensive revision</b>   |  |
| <b>Option 3: Repeal, modernisation of relevant provisions introduced in other legislation</b> | Option 3a: relevant provisions introduced <b>in horizontal legislation</b>       |
|   | Option 3b: relevant provisions introduced <b>in product-specific legislation</b> |

The three identified policy options are effective and propose substantially different policy measures. The option design is wide and ranges from Repeal (Option 1) of the current framework to comprehensive reform (Option 2). These two distinct policy options had support from different stakeholders right from the start of the consultations. A third policy choice proposed to repeal the current Directive but safeguard its relevant provisions, either in another regulatory legislation or directly in the product-specific legislations.

The starting point of the initiative was based on one of the main outcomes of the Evaluation, namely that the needs originally addressed by the Directive have progressively but not exhaustively been addressed by other EU legislation (reduced relevance) and that there is significant overlap between the Directive and subsequent EU legislation (lack of coherence). The founding aim of the initiative was to simplify the current legislative framework (General Objective 1 and Specific Objective 1). As a first step, a mapping exercise was conducted to

check the degree of overlap between the Directive and other EU legislations and the remaining legal relevance of the Directive. After conducting the mapping exercise and identifying those financial sectors where the Directive was still legally relevant, the practical relevance (effectiveness) on the ground for the stakeholders was examined. At this stage, the safety net feature was analysed: an examination was conducted to see whether in those instances where the Directive was still legally applicable (for instance in insurance sector and for private pensions) the stakeholders were actually applying it on the ground. This two-step approach could have led to a total repeal of the directive and abandoning of the safety net function, namely if the Directive and its key features were not used on the ground. However, the outcome was that in certain cases it was still legally relevant and applied on the ground.

In this context, Option 1 (Repeal) was the starting point and could not be discarded upfront, since the objective of simplifying the current legislative framework (eliminating overlaps) could have been achieved through this Option. In addition, it is worth noting that in the Inception Impact Assessment replies, businesses were either in favour of keeping status quo or in favour of repeal.

### **5.1. What is the baseline from which options are assessed?**

The baseline from which options are assessed (Option 0) is a "no policy change" scenario. It implies the **continuation of the *status quo*** for the period 2022-2031. Hence, the Directive would remain in force but no specific measures would be undertaken to tackle the problems detailed in [Section 2](#), which could evolve as explained in [Section 2.3](#) (How will the problem evolve).

Certain provisions of the DMFSD are still relevant for facilitating consumer protection in distance selling and marketing of financial services<sup>79</sup>. According to the Directive's Evaluation, 15-28 million EU consumers have benefited from key Directive provisions since its transposition in 2004, chiefly in the context of payment accounts, insurance and - to a lesser extent – pensions and consumer loans.

In the baseline scenario, the Commission would continue to monitor the Directive implementation at national level, and national authorities would continue to enforce it. Enforcement authorities would continue to cooperate through the Consumer Protection Cooperation (CPC) network and the European Consumer Centres Network (ECC-Net). The Court of Justice of the European Union (CJEU) would continue to interpret the Directive, shedding further light on some of the unclear provisions, when required to do so.

With regard to the impact of currently proposed legislation by the Commission, this will be particularly of a regulatory nature (see [Section 2.4](#)). On the one hand, the current Consumer Credit Directive and Markets in Crypto-assets Regulation proposals will lead to less products being captured by the DMFSD and thus result in a reduction of its relevance. On the other hand, the current Solvency II proposal will lead to more insurance firms falling under the scope of the DMFSD. This is so since the revision of Solvency II proposes to exempt

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<sup>79</sup> See Legal analysis, Supporting study to the Impact Assessment (VVA et al.).

insurance firms currently falling under Solvency II and thus, whenever the service is sold at a distance, the DMFSD would apply.

Keeping *status quo* has only received mild support, mainly from financial providers who oppose repealing the Directive. In fact, half of the financial providers/associations who responded to the Inception Impact Assessment are in favour of keeping the current framework for two main reasons: first, they view positively the technology neutral approach of the Directive; second, the safety net feature is important for certain current financial services and for future ones. With regard to the actual application of the safety net feature, through the different consultations held, public authorities have cited a number of instances when they use the DMFSD, including in the area of investment in expensive wines and diamonds, or certain gift-cards that fall outside the scope of PSD II, or current loans below EUR 200 that fall outside the Consumer Credit Directive. Public authorities have also been recorded as stating that they use the DMFSD as a top-up when carrying out investigations, meaning that they include the provisions of the DMFSD in conjunction with the product-specific legislation. In addition, national courts have also used the DMFSD<sup>80</sup> vis-à-vis still unregulated products (e.g. cryptocurrencies).

## 5.2. Description of the policy options

In addition to the baseline scenario, four other options are considered to address the problems identified, with the aim to achieve the initiative’s objectives, as shown in the intervention logic ([Figure 2](#)).

*Table 3. Proposed measures per Policy Option covering financial services*

|  | <b>Option 1: Repeal and non-regulatory measures</b>  | <b>Option 2: Comprehensive revision</b>   | <b>Option 3a: Repeal, modernisation of relevant provisions injected in horizontal legislation(CRD)</b>                                  | <b>Option 3b: Repeal, modernisation of relevant provisions injected in product-specific legislation</b>   |
|--|--|---|---|---|
| Simplification of the legal framework ( <i>problem 1</i> ) | Repeal would eliminate current over-lap and thus help simplifying the framework. Repeal would also lead to the disappearance of the “safety net” feature provided by DMFSD | Clarify in the legislation that new measures going beyond the current sector specific legislations would apply to all financial services, but that sector specific legislation applies when there is an overlap with DMFSD. | Clarify in the legislation that sector specific legislation applies when there is an overlap with the modernized former DMFSD articles. | Repeal would help simplifying the framework. No “safety net” feature for future products that would not be subject to product specific legislation. |

<sup>80</sup> Verona Court, Decision n°195 of 24 January 2017, available at: [https://www.dirittobancario.it/sites/default/files/allegati/tribunale\\_di\\_verona\\_24\\_gennaio\\_2017\\_n.\\_195.pdf](https://www.dirittobancario.it/sites/default/files/allegati/tribunale_di_verona_24_gennaio_2017_n._195.pdf).

|   |   |  |  |  |
|---|---|--|--|--|
| Information<br>( <i>problem 2.1</i> )                 | Financial education campaigns to improve financial and digital literacy, run by the European Commission and the relevant EU agencies, such as the European Insurance and Occupational Pensions Authority. | Introduce rules on information to be included in advertising; Standardised pre-contractual information form for all financial services; Introduction of rules on robo-advice to enhance transparency and fairness; Specify the timing for the provision of the key information (i.e. information are provided not generically “in good time” but at least “one day before” the contract is concluded). | Require that information is adapted to the channel on which it is displayed; Modernization of the information that needs to be provided to consumers (e.g. inclusion of the need to mention email address); Specify the timing for the provision of the key information i.e. information is provided not generically “in good time” but at least “one day before” the contract is concluded) Alternatively, mandatory reminder of the Right of Withdrawal after the conclusion of the contract). | Require that information is adapted to the channel on which it is displayed; Modernization of the information that needs to be provided to consumers (e.g. inclusion of the need to mention email address); Specify the timing for the provision of the key information (i.e. information are provided not generically “in good time” but at least “one day before” the contract is concluded). Alternatively, mandatory reminder of the Right of Withdrawal after the conclusion of the contract. |
| Right of withdrawal (RoW)<br>( <i>problem 2.2</i> )   | Awareness raising campaigns on consumer right of withdrawal, organised by the European Commission and the relevant EU agencies.   | Provision of a specific “Withdrawal form” including standard rules on manner of exercise for the right of withdrawal.  | Reminder of the right of withdrawal in case pre-contractual information is provided less than one day before. Financial service providers to provide for a cancellation button.  | Reminder of the right of withdrawal in case pre-contractual information is provided less than one day before. Financial service providers to provide for a cancellation button.  |
| Exploitative practices<br>( <i>problem 2.3</i> )      | Industry self-regulation to avoid harmful practices, based on an EU Recommendation.   | Ban on product tying.  | Prohibition of default options e.g. pre-ticked boxes.  | Prohibition of default options e.g. pre-ticked boxes.  |
| Cross-border offer and access<br>( <i>problem 3</i> ) | Guidelines by the European Commission on information disclosure and on the application of right of withdrawal to increase harmonisation.  | Establishment of a new framework.  | Establishment of new provisions bringing legal clarity.  | Establishment of new provisions bringing legal clarity.  |

### Option 1: Repeal of the Directive and non-regulatory measures

Option 1 envisages the repeal of the Directive. In procedural terms, the Commission would need to adopt a proposal to repeal the current DMFSD. This would then be subject to the co-decision procedure.

With regard to Problem 1 and the linked actions to ensure a simplification of the legal framework, the result of the Commission proposal to repeal would be that at EU level, once the current DMFSD is repealed, there would no longer be EU horizontal rules providing consumers with rights and applicable to future financial services or products for which there would not, as yet, be product-specific legislation (i.e. no more safety net). In addition, there will no longer be EU horizontal rules in those areas for which the DMFSD is still relevant (e.g. right of withdrawal in the insurance or payments area). Thus, the repeal of the DMFSD frees Member States from the obligation to transpose, implement and enforce the current provisions of the DMFSD.

This measure of repealing the DMFSD implies that the overlap at EU level of the rules of the DMFSD and the corresponding rules of the product specific legislation will no longer exist, thereby simplifying the EU legislative framework. However, this does not mean that Member States will automatically repeal their current rules<sup>81</sup>. Therefore, financial providers might still be bound by the current national rules, which, as time goes by, might become different depending on the different Member State legislative action<sup>82</sup>. In fact, if legislation at national level is amended, businesses would need to comply with new rules and consumers would need to familiarise themselves with them. If the level of consumer protection is lowered from the current one, enforcement authorities might need to deal with an increased number of complaints. In addition, since there would no longer be harmonised rules established at EU level, there might also be Member States that remove the right of withdrawal, thus creating disparities across Member States and increasing the uncertainties of contracting a financial service across border.

With regard to Problem 2.1 and the linked actions to improve the right of pre-contractual information, in the absence of EU rules, financial education campaigns to improve financial and digital literacy would be required to combat the issue concerning information issues at the pre-contractual stage. The European Commission, in conjunction with the relevant EU agencies, would set up such a campaign which Member States would then implement and complement on the ground.

With regard to Problem 2.2 and the linked actions to improve the right to withdrawal, in those Member States that would have kept the right of withdrawal, an awareness campaign on the existence of the right of withdrawal may be envisaged. The aim would be to inform and empower the consumer of the availability of this right. Similar to action proposed for Problem 2.1, the European Commission, in conjunction with the relevant EU agencies, would set up such a campaign which Member States and their public authorities would then implement and complement on the ground.

With regard to Problem 2.3 and the linked actions to address exploitative practices, in an effort to ensure consumer trust, financial services, on the basis of a Recommendation

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<sup>81</sup> During the stakeholder consultations, certain public authorities have expressed the view that they would keep the current rules, regardless of what happens to the DMFSD.

<sup>82</sup> The possibility for Member States to deviate one from another concerns those parts of the current DMFSD which are still relevant, such as the right of withdrawal in the insurance sector (See [Section 2.1](#) to see which parts of the current DMFSD are still relevant).

proposed on the basis of Article 288 TFEU, providers may implement out of their own will practices that do not cause consumer detriment (self-regulation by industry).

With regard to Problem 3 and the linked actions to improve cross-border and access, in addition to the actions under Problem 2.1 and 2.2, guidelines by the European Commission on information disclosure and on the application of the right of withdrawal may increase the provision of cross-border financial services, even though the DMFSD would have been repealed.

#### Option 2: Comprehensive reform

Option 2 entails a comprehensive reform of the current framework through the introduction of new measures. Some of the below measures have been inspired by the Recommendations of the [Behavioural Study](#) on the digitalisation of the marketing and distance selling of retail financial services, the Evaluation or the contributions by consumer organisations in the context of the stakeholder contributions or other legislations, such as the Payment Account Directive or the recent proposal to revise the Consumer Credit Directive. This option would entail a substantial review of a self-standing act (the Directive itself). Hence, the measures could go beyond what is currently in the Directive and address issues such as robo-advice. Since out of the three policy options, Option 2 is the only comprehensive reform proposing to set out new rules, certain measures, such as measures concerning robo-advice are only included under this policy option. Under this policy option:

Problem 1 (the simplification of the current framework) would be addressed by the following measures:

- the introduction of a hierarchical norm to specify that in case of an over-lap of the obligations stemming from the DMFSD and the sector-specific legislation, the latter prevails; and
- a provision explaining that the new obligations imposed by the ‘revised DMFSD (e.g. ban on tying) will need to be applied to all financial services.

The addresses of these complementary measures are the *Member States* that would need to transpose the new provisions and *public authorities* would then need to enforce the appropriate legislation.

Problem 2.1 (issues with pre-contractual information) would be addressed by the following measures:

- **Introduction of rules on how information provided at the advertising stage would need to be channelled.** Advertising is a powerful tool as it nudges consumers to purchase a product and often uses tools influencing behavioural biases to do so. Most of the time, the problems involve costs and risks not being properly disclosed in the advertisements. At present, the DMFSD does not regulate the provision of information at the advertisement stage. Thus, this will be a new area to be tackled by the DMFSD and the provision will establish how the information would need to be channelled so that the consumer obtains information in a transparent manner. In this regard, the DMFSD would propose a set of provisions regulating standard information for advertising. Concretely, the provision would set out the format and content of how advertisement should be carried out for financial services. The content would include an overview of the main



characteristics of the product, the total price and warnings depending on the level of sophistication of the financial product. The addressees will be *Member States* in the sense that they would need to transpose the new provision and their *public authorities* that would need to enforce the provision and *financial services providers* to comply with this new obligation.

- **Standardised pre-contractual information form for all financial services:** inspired from the pre-contractual obligations laid down in the Payment Accounts Directive, a fee information document and glossary (FID) for all financial services would be introduced. The fee information document would be a stand-alone document, presenting in a short and concise manner the accurate amount in the currency of the financial service providers the fees linked to the product or service. It is a basic document capturing the key standard information requirements which, through its generic nature, would be able to apply to present and future financial products. The *main addressees*, apart from the necessary transposition and enforcement by Member States, would be *financial service providers*.
- Introduction of **rules on robo-advice** to enhance transparency and fairness: Digitalization, in this case, Artificial Intelligence, is bringing new automated ways of interacting with consumers. The European Commission Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG), in its Final Report to the European Commission<sup>83</sup>, refers to used cases of robo-advice in the financial sector (e.g. in brokerage and investment management or in insurance products and services) and calls on the Commission, to improve explainability and interpretability of services that use artificial intelligence (AI). Therefore, the DMFSD represents an opportunity to provide rules on robo-advice, to ensure that the advice provided is suitable, transparent, user friendly and void of any conflict of interest. In this regard, the robo-advice would need to be provided through a durable medium to ensure traceability and the rules will take the form of a set of provisions dedicated to this channel of communication. The provisions would regulate how the robo interacts with the consumer, in the sense that the quality of information provided by the robo would need to meet certain qualifications, such as being independent, transparent and to suggest products in the interest of the consumer. The *main addressees* would be *financial providers* that use robo-advice as part of their interaction with consumers..
- **Specify the timing for the provision of the key information:** In order to ensure that the consumer is not coerced to sign the contract without reflecting, specifying the current vague term ‘in good time’ would be required. Therefore, the time-gap between the provision of the pre-contractual information and the actual signing of the contract would be of one working day. This would allow the consumer to digest the information before signing the contract.

Problem 2.2 (the sub-optimal use of the right of withdrawal) will be addressed with the following measures inspired by the Commission proposal to Revise the Consumer Credit Directive and the current provision on the right of withdrawal found in the Consumer Rights Directive:

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<sup>83</sup> ROFIEG (2019).



- **Provision of a specific “Withdrawal form”:** Article 11 of the Consumer Rights Directive regulates the exercise of the right of withdrawal. In Annex I (B) it provides a model withdrawal form which may be used by the consumer to express his/her intention to withdraw from the service or product. This model form would be extended to all financial services and would include standard rules on the manner of how the right of withdrawal may be exercised. Therefore, whenever a consumer exercises his/her right to withdraw, the use of the form would need to be recognized by the service provider. The *main addressees* would be the *public authorities* who would need to monitor and enforce this obligation and *financial providers* who would need to accept the withdrawal once this form is presented within the stipulated time.
- **Right of withdrawal clearly highlighted in the pre-contractual stage:** Since the right of withdrawal is one of the key rights, has remained relevant for certain sectors, and financial services products may be complicated for a consumer to understand, an obligation on financial services *providers* will be set in order to clearly highlight this right at the pre-contractual stage. This would be done in a way appropriate to the channel used.

With regard to Problem 2.3 (exploitative behaviour by financial providers nudging consumers), Article 12 of the Mortgage Credit Directive would be extended to all the financial services market, namely a **ban on product tying**. The main addressees would be financial service providers.

With regard to Problem 3 (cross-border offer and access), the legal framework would be sanitized and modernised. This option would, with the inclusion of the hierarchical provision, ensure more legal certainty and keep the safety net feature of the current Directive. This might increase the level of harmonisation and thus stimulate more cross-border offer.

Option 3a: Repeal, modernisation of relevant rights injected in horizontal legislation (Consumer Rights Directive)

In this option, the DMFSD would be repealed and only the relevant consumer rights would be injected in the Consumer Rights Directive. The relevance of the three consumer rights enshrined in the DMFSD has been discussed above ([problem 1](#)). Since most of the articles of the DMFSD have lost their relevance and the lack of regulatory intervention on its legal framework has resulted in coherence issues with other legislations, only the still relevant rights would be saved, namely the right to pre-contractual information and the right to withdrawal. In doing so, **these two rights** would be **modernized** and rendered **fit** for the **digital age**, whilst also **conserving the safety net feature** in case future financial services products appear on the market and for which no legislation would apply.

Since the DMFSD would be repealed, the natural place to move these rights would be the Consumer Rights Directive, which is also a horizontal piece of consumer legislation. In this manner, the decision taken by Directive [97/7/EC](#) (predecessor of the Consumer Rights Directive) to exclude financial services from its scope would be partially revisited. Under this option, the injection of the modernised rights would ensure that the internal balance of the Consumer Rights Directive is not impacted and that not all of its rules will apply to financial services. Under this option, apart from the extension of certain rules currently found in the Consumer Rights Directive to distance marketing of consumer financial services, the

proposed measures either build on the text of the Consumer Rights Directive or are inspired from the recent Commission Proposal to Revise the Consumer Credit Directive.

Thus, in short this option is based on the concept of reducing as far as possible the current overlaps while safeguarding and modernising those provisions that are still relevant. So in essence, option 3a sanitizes and modernise the framework; sanitizes in the sense that the redundant rules (e.g on unsolicited communication) will not feature in the updated version of the rules concerning financial services and modernised in the sense that the still relevant provisions will be rendered fit for the digital age. This will be carried out by changing the current exclusion of financial services from the Consumer Rights Directive and applying, as far as possible, its existing rules, in particular, on pre-contractual information and the right of withdrawal, to financial services. This explains also why measures proposed under option 2, such as robo-advice fit only under option 2, but not option 3.

Measures under this Option:

Problem 1 (the simplification of the current framework) would be addressed by the following measure

- **Clarification in the legislation that sector specific legislation applies when there is an overlap with modernized-former DMFSD articles:** Similar to Article 3(2) of the Consumer Rights Directive, a hierarchical norm to specify that if the provisions of the modernized former-DMFSD articles conflict with a provision of another Union act governing that financial services product, the provisions of that other Union shall prevail and shall apply to the product.

The following measures would address Problem 2.1 (issues with pre-contractual information):

- **Information adapted to the channel on which it is displayed:** To enhance consumer empowerment through effective information, the display of pre-contractual information would have to be done in a way appropriate to the means used (mobile phone screen etc.).
- **Modernization of the information that needs to be provided to consumers:** Information concerning the financial services provider would be modernised, to include, for instance the provision of its email address which is currently missing from the DMFSD. The Consumer Rights Directive would serve as the basis for the required updating while ensuring that it fits the particular nature of financial services.
- **Specify the timing for the provision of the key information:** Inspired by the Commission proposal to revise the Consumer Credit Directive, the term ‘in good time’ would be specified, namely that if the pre-contractual information concerning the financial service is provided less than one day before the contract is concluded, the financial services provider would be obliged to send a reminder of the possibility for the consumer to exercise the right of withdrawal.

The addressees of the measures would be financial services providers.

With regard to Problem 2.2 (suboptimal use of the right of withdrawal) the **mechanism explained above** concerning ‘specifying the timing for the provision of the key information’ would also improve the right of withdrawal. The suggested mechanism would emphasise the

existence of the right of withdrawal and thus, possibly trigger its use, where appropriate. In addition, to facilitate the exercise of this right, a rule obliging financial service providers to provide a cancellation button will be introduced.

With regard to [Problem 2.3](#) (exploitative behaviour by financial providers nudging consumers), Article 22 (Additional payments) of the Consumer Rights Directive could serve as the basis to regulate default options in the financial services area. The main addressees will be the financial service providers.

With regard to Problem 3 (cross-border offer and access), the repeal of the DMFSD and the injection of the relevant modernized rights would, with the inclusion of the hierarchical provision, ensure more legal certainty, keep the safety net feature of the current Directive and increase the level of harmonisation with regard to the right to pre-contractual information and the right of withdrawal. Thus, this should stimulate more cross-border offer.

Option 3b: Repeal of the DMFSD, modernisation of relevant provisions injected in product-specific legislation

In this option, the DMFSD would be repealed and only the relevant consumer rights would be injected in the different product-specific legislation. The relevance of the three consumer rights enshrined in the DMFSD has been discussed above ([problem 1](#)). Since most of the articles of the DMFSD have lost their relevance and the lack of regulatory intervention on its legal framework has resulted in coherence issues with other legislations, only the still relevant rights will be saved, namely the right to pre-contractual information and the right to withdrawal. In doing so, **these two rights will be modernized and rendered fit for the digital age.**

However, unlike Policy Option 3a, the modernized provisions would be injected into the different product-specific legislation. Thus, for instance, the right of withdrawal would be introduced into the Payment Accounts Directive. This would need to be repeated in all financial services legislation that currently do not offer the same level of rights as the DMFSD. In doing so, the level of consumer protection currently provided by the DMFSD would be conserved.

However, two points are worth highlighting. In order to keep the same level of protection, the proposals to amend the product-specific legislation need to be agreed and adopted. In addition, **this approach would not ensure the safety net feature**, in the sense that while current products would be covered, future products that would not be as yet subject to legislation would remain outside the scope of any EU legislation. This is so since the Consumer Rights Directive excludes from its scope financial services and the DMFSD would be repealed. Therefore, the result of this policy option is that there would no longer be a consumer horizontal legislation covering financial services.

The measures proposed for Policy Option 3b are the same as for Policy Option 3a, but the former differs in terms of the delivery instrument choice. This policy option is the outcome of the mapping exercise and the fact that the relevance of the Directive has been reduced. Through repeal but safeguarding the relevant provisions, the general and specific objectives could be reached. In addition, the methodology applied in order to identify the usefulness or

not of the safety net (explained in the introductory part of Chapter 5) meant that option 3b could not be discarded from the start.

### 5.3. Options discarded at an early stage

The option to transform the Directive into a Regulation was considered but discarded at an early stage. The *prima facie* strong point of turning the rules into a Regulation was that it would provide directly applicable rules thereby ensuring a high level of consumer protection and would have reduced barriers in the sense that the possibility for Member States to transpose the rules differently would be eliminated.

However, since 2002 the Directive has lost much of its relevance. Creating a large number of actions and making them directly applicable would run counter to the reality of the current state and use of the Directive. In addition, introducing new far-reaching measures and presented in the form of a **Regulation would have increased**, not decreased, the current **problem caused by overlaps** between it and the product-specific legislation. Thus, in terms of coherence, this option would have led to complex legal untangling, in particular on recently adopted legislations (e.g. the 2020 Crowdfunding Regulation) or on negotiations of recent legislative proposals such as the revision of the Consumer Credit Directive.

In terms of **efficiency**, the preliminary indications were that the **impact on public authorities would be negative** since the expected recurrent monitoring and enforcement costs would be excessive. The **one-off and recurrent compliance costs** of such a far-reaching Regulation, especially handling consumers' complaints, **for financial service providers would have also been high**, and did not seem proportionate.

In terms of **effectiveness**, SO2, SO3 and SO4 (improvements for consumers) might have scored positively under the discarded option; however, under SO1 (simplifying existing legal framework) **the score would have definitely been negative and would have outweighed any possible benefits**.

The **combination of options 3a (Repeal, modernisation of relevant rights injected in horizontal legislation) and 3b (Repeal of the DMFSD, modernisation of relevant provisions injected in product-specific legislation)** as described above was also considered but then discarded upfront. The reason for discarding this combination upfront is that it would not achieve the general objective and specific objective 1 to simplify the existing legal framework. The aim of the revision is to eliminate overlaps and provide legal clarity to stakeholders (businesses, citizens, Member States authorities). **The combination of options 3a and 3b will entail references to two legal texts** (the revised Consumer Rights Directive and the product-specific legislation) and will require repeating the same provisions/suggested measures in the Consumer Rights Directive and the product-specific legislation. Such an option duplicates legal norms and departs from the objective of streamlining the regulatory framework

## 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section presents a qualitative and partially quantitative assessment of each of the policy options, on different categories of stakeholders, against **three main criteria**:

- **Effectiveness**: how successful the policy option is expected to be in addressing the specific objectives (SOs) outlined in the intervention logic. The effectiveness of each

option is rated using a scale from -5 (very low effectiveness) to 5 (very high effectiveness). The scoring is based on the results of the stakeholder consultation, including the Public Consultation, on desk research and legal analysis.

- **Efficiency:** the impacts of the revision of the Directive on the different stakeholder groups, which can be either positive or negative. A wide array of economic, social, environmental, and overarching impacts have been considered. Based on their expected magnitude, likelihood and relevance for stakeholders<sup>84</sup> the following categories of significant impacts were selected<sup>85</sup>:

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**Financial Service Providers:**

- Expected weight of one-off compliance costs
- Expected weight of recurrent compliance costs (e.g. costs of handling consumers' complaints)

**Consumers:**

- Expected impact on consumer trust
- Expected impact on consumer detriment

**Public authorities:**

- Expected impact on adaptation on one-off adaptation costs
  - Expected impact on recurrent monitoring and enforcement costs
- 

The impacts were scored from -5 (very negative impact) to 5 (very positive impact). The results of the qualitative assessment build on stakeholders' views in the various consultations and on the results of the quantitative estimates<sup>86</sup>.

The cost for businesses that were taken into account for the purposes of the analysis are clustered into two groups: "one-off costs", including costs that businesses are expected to incur in only at the time of the implementation of the regulatory revision; and "recurring costs", including those costs that are expected to be repeated on a yearly basis. For the purposes of the quantitative analysis, these costs have been considered for a period of 10 years following the regulatory change and accounted at their net present value.

The one-off costs considered for this study are:

- Costs related to familiarisation with the new regulatory framework;
- Costs incurred by financial services for the adaptation of their information systems (including website);
- Costs incurred for the update of the documentation, both internal and for consumers' information.
- Costs incurred for the update of staff training activities, accounted in proportion to the relevance of the DMFSD in relation to pre-contractual information and right of withdrawal;

The recurrent costs for financial services estimated in the analysis:

- Compliant handling costs;
- Costs relevant for robo-advisors;
- Cost reduction due to the simplification (no duplication) of the documentation shared with customers.

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<sup>84</sup> Consulted stakeholders did not highlight disproportional impacts on SMEs in comparison to large enterprises so they have not been assessed separately. Also costs for the EU public authorities have not been identified as significant as compared to costs for Member States public authorities, so they have not been assessed separately.

<sup>85</sup> The impact on cross border trade was not included among the impacts assessed under efficiency to avoid double counting, because it is included in the effectiveness assessment.

<sup>86</sup> See section 7.3 and Annex 4.



Regarding the impacts on consumers, the analysis builds on the estimates of consumer detriment calculated in the related evaluation study and provides an indication of the reduction in consumer detriment in proportion of the reported expected effectiveness of the proposed policy measures.<sup>87</sup> For the purposes of this assessment, the estimated consumer detriment for the year 2018 (DMFSD evaluation study) has been extended for the period 2022-2031 at a discount rate of 4% per annum.

- **Coherence:** how the measures planned would interact with other EU legislation and with EU policy objectives, such as its digital priorities (future proof approach), leading to increased legal clarity. The coherence score ranges from 0 (no change to the level of legal coherence) to 5 (increase of EU legal coherence to a very great extent). The scoring is based on the results of the stakeholder consultation, including the Public Consultation, on desk research and legal analysis.

The attribution of scores and the description of the assessments are the **result of an analytical exercise** detailed in the supporting study **based on desk research, legal analysis, expert judgment and stakeholder consultation**. Evidence collected was examined, analysed and triangulated.

### 6.1. Option 1: Repeal of the Directive and non-regulatory measures

With repeal, the current over-lap between the DMFSD and product-specific legislation would be eliminated, thereby simplifying the existing legislative framework and, at the same time, ensuring a decent level of ‘coherence’. However, this Option scores poorly under effectiveness and efficiency since it would lead to the lowering of consumer protection and open the way for possible uneven level playing field between current products and future products. The "cost-of non-Europe", namely the cost of the Union no longer acting, has been integrated as well.

#### Effectiveness:

| Specific objectives (SOs)  | Rating |
|--|--------|
| SO 1: Simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive’s relevant provisions are included in the most adapted regulatory legislation(s) | 3      |
| SO 2: Ensure that consumers purchasing financial services at distance are empowered by effective and timely information  | -1     |
| SO 3: Ensure that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services  | -2     |
| SO 4: Prevent that consumers are nudged into purchasing financial services which are not in their best interest  | 0      |
| SO 5: Reduce barriers for providers offering financial services across borders while enabling more choice for consumers  | -1     |

The only positive point brought by Option 1 towards achieving the initiative’s specific objectives concerns the removal of the current regulatory overlaps. This is so since with the repeal of the Directive, there will no longer be any overlaps with sector-specific or horizontal EU legislation. However, the fact that product-specific legislation does not cover in all

<sup>87</sup> The DMFSD evaluation study calculates that the net benefits of the DMFSD in the period 2004-2018 were on average 3,7% annually. Based on stakeholders’ feedback, to each policy measure is assigned a rate of expected increase of effectiveness which contributes, in turn, to a reduction of consumer detriment.



instances i) all financial services sold at distance (i.e a number of products – e.g gift cards under PSD II, or loans below EUR 200 from the Consumer Credit Directive - fall outside the scope of application of product specific legislation) and ii) all the rights provided in the DMFSD (no right of withdrawal in most insurance legislations) means that the complete repeal of the DMFSD would lead to gaps in consumer protection, particularly with regard to the rights of pre-contractual information and right to withdrawal for certain financial services. The complete repeal would thus lower the level of consumer protection meaning that SO 2, SO 3 and SO 4 would not be positively reached. The difference in marking between these three SO is explained by the fact that the right of withdrawal is still quite relevant for a number of financial services and thus, its loss, will have a larger impact. In addition, there are currently no rules that specifically address nudging, so its repeal will not lower current protection since there is no protection currently against this practice. The repeal of the DMFSD will also entail the loss of the “safety net” feature, with the result that future financial services not covered by product-specific legislation would not be covered by the obligations relating to pre-contractual information and the right of withdrawal. The loss of the “safety net” will also lead to a possible unlevel playing field between regulated and non-regulated financial services<sup>88</sup>. This explains why SO 5 has also a rather negative scoring. The non-regulatory measures proposed will not mitigate the lowering of consumer protection since such information campaigns and guidelines will not significantly impact the behaviours of providers and consumers. According to the feedback gathered, some industry representatives are the only ones that believe that Option 1 would be effective in addressing the identified problems since this option will eliminate the overlap issue between the Directive and the product-specific legislation.

Coherence:

In terms of coherence, Option 1 scores 2. In fact, repealing the DMFSD would have an overall positive impact since deleting it would eliminate the overlap between different legislative acts. However, the loss of the safety net feature for financial services bought at a distance lowers the level of consumer protection and thus renders this option not fully coherent with the goal set out in Article 169 of the Treaty on the Functioning of the EU (TFEU) and with EU policy objectives (“A Europe fit for the digital age”).

Efficiency:

| Main category of impacts  |                             | Score |
|---------------------------|-----------------------------|-------|
| Consumer trust            |                             | -3    |
| Consumer detriment        |                             | -4    |
| Business compliance costs | One-off                     | 0     |
|                           | Recurrent                   | 1     |
| Member State costs        | One-off adaptation costs    | 0     |
|                           | Recurrent enforcement costs | 0     |

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<sup>88</sup> For instance, in insurance products, if the DMFSD is repealed, current products will be subject to pre-contractual information obligations stemming from the product-specific legislation and no longer subject to the right of withdrawal stemming from the ‘repealed’ DMFSD. Without the DMFSD, newly emerged products not subject to any product-specific legislation will have no obligations to respect and would not offer any consumer rights. This creates an unlevel playing field between current and future financial services.

*Consumers:* Repealing the DMFSD would be the most negative option for consumers both in terms of consumer trust and consumer detriment. Such option was the least popular one among consumers organisations in the survey run by the contractor working on the Support Study (all of them are against the repeal of the Directive, since it would lower the level of consumer protection, repeal the safety net feature and reduce consumer trust in the area of financial services). More than half of the interviewed stakeholders believe that repeal of the DMFSD would bring detriment to consumers both for current and future products since repeal will deprive them of basic consumer rights. The partial quantification performed for this impact assessment shows that a repeal would lead to around EUR 430 million in terms of consumer detriment<sup>89</sup>. These costs, however, could be somewhat reduced in case of effective self-regulation of the industry (not monetised) or other non-regulatory measures. Repeal would also lead to loss of consumer trust since without the *ex ante* right to pre-contractual information and the *ex-post* right of withdrawal, consumers will contract less financial services at a distance.

*Businesses:* Repealing the DMFSD would have an impact on financial services providers one off costs, since they would have to face a new regulatory framework, even though according to Member State consultation, there would not be an immediate repeal of the current national rules by all Member States. Nonetheless, over a period of 10 years, it may be expected that Member States amend their legislation, and with no harmonised rules in the area for which the DMFSD applies today (e.g. right of withdrawal in insurance), the respective Member States might enact different new rules. On the other hand, the repeal would reduce costs in terms of communications to consumers which are higher because providers seem to send information twice to comply both with the DMFSD and with sector specific legislation. Hence, Option 1 could entail a balance between costs and benefits for financial service providers with costs for financial services providers since national legislation would apply. Option 1 would have negative consequences on the cross-border trade since, as stated by industry representatives and consumer organisations, repealing the DMFSD would decrease consumer trust when purchasing financial services online. This would lead to lower uptake of cross-border trade in online financial services in the EU. The repeal of the DMFSD would also create an unlevel playing field with newly emerged products that would not be subject to any product-specific legislation since the latter would be free from any kind of regulation. Some financial services providers/associations support repealing the Directive to solve overlap issue, and checking its relevance and coherence before introducing new or modernised rules. However, the complete repeal is strongly opposed by those financial providers and business associations offering products whose product specific legislation does not cover all the rights of the DMFSD. They argue that safeguarding a basic level of consumer rights ensures trust and avoids legal gaps.

*Public administration:* Repealing the DMFSD would have no immediate impact on public administration regarding enforcement and adaptation costs respectively since, according to Member State consultation, there would not be an immediate repeal of the current rules by all Member States. Nonetheless, over a period of 10 years, it may be expected that Member

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<sup>89</sup> For more details see [Annex 4](#).

States amend their legislation and thereby incurring adaptation costs and subsequent enforcement costs. In the consultation, the majority of public authorities have consistently held that repealing the Directive would lower the level of consumer protection and deprive them of a piece of legislation that they still use for investigative and enforcement purposes. While public authorities have stated that the number of complaints concerning the Directive is low, they use it as a top-up, meaning that they also cite its provisions alongside other relevant product-specific legislations when carrying out investigations. Throughout the different consultation strands, the majority of public authorities and the scientific researcher participating in the public consultation, have highlighted that technology and the subsequent appearance of products on the market often out-paces the legislative process and thus the safety net was important for this purpose.

The “cost of non-Europe” would account for the benefits forgone in case of repeal of the DMFSD in comparison with the alternative policy interventions. In case of repeal, the regulatory framework would be simplified leading to a marginal reduced cost for businesses which could be considerable if compared to the increased costs of PO2 (EUR 190 million) or more limited in comparison to PO3a and PO3b (about EUR 20 million). Nevertheless, the larger “cost of non-Europe” would be experienced by European consumers that would lose, in the long term, the opportunity to reduce their detriment (around EUR 140 and 250 million in 10 years as per PO3(a), PO3(b) and PO2).

## 6.2. Option 2: Comprehensive revision

This option would address the initiative’s specific objectives related to the right to pre-contractual information and right to withdrawal in a very effective way. However, the impact of its measures on stakeholders would vary, from clearly positive for consumers, to negative for businesses (significant compliance costs) and public administrations (enforcement and adaptation costs). Due to the comprehensive nature of the measures, the coherence with other legislations will not be improved when compared to the baseline.

### Effectiveness:

| Specific objectives (SOs)  | Rating |
|--|--------|
| SO 1: Simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive’s relevant provisions are included in the most adapted regulatory legislation(s) | -1     |
| SO 2: Ensure that consumers purchasing financial services at distance are empowered by effective and timely information  | 4      |
| SO 3: Ensure that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services  | 4      |
| SO 4: Prevent that consumers are nudged into purchasing financial services which are not in their best interest  | 4      |
| SO 5: Reduce barriers for providers offering financial services across borders while enabling more choice for consumers  | 3      |

Option 2 would be particularly effective with regard to SO 2, SO 3 and SO 4 since the package of measures<sup>90</sup> to be introduced will modernise the right of withdrawal and the right to pre-contractual information and counter practices exploiting consumer biases.

On the other hand, this option might not necessarily simplify the existing legal framework. While the current over-laps will be clarified through a hierarchical provision<sup>91</sup>, the legal

<sup>90</sup> A standardised pre-contractual information form for all financial services, specify the timing for the provision of the key information, rules on robo-advice, ban on tying, standardised withdrawal form and standard rules on how to exercise withdrawal, the provision of basic products – see [Section 5.2](#).

framework would not be simplified. The current Directive will remain in place. Its limited use by a number of public authorities, evidenced by the low number of complaints and limited documented case-law, together with the subsequent product-specific legislation, put in question its current relevance. Moreover, the addition of new provisions (e.g. robo-advice) to be applied horizontally to all financial services might not be sufficiently future-proof and detailed, meaning that a product-specific legislation might, within the next ten years, regulate those aspects in a different more detailed way. This might cause unnecessary over-lap.

However, Option 2 would safeguard the safety net feature of the Directive and thus ensure a level playing field between current and future products not yet subject to product-specific regulation. Its contribution to reducing barriers for cross-border provision of financial services through the creation of a more harmonised framework would be positive. However, the lack of simplification of the existing framework could have the knock-on effect of creating new barriers to the provision of cross-border financial services since Member States might not transpose the new rules consistently.

Coherence:

In terms of coherence, Option 2 scores -1. The current over-laps with product-specific legislation would be clarified through the hierarchy provision. However, some measures, for example the establishment for all financial services the obligation to have a standard information form, might create confusion with current rules already found in the product-specific legislation (e.g. in the Payment Accounts Directive). Moreover, even if the safety net feature of the Directive would be kept, the numerous new additions to its framework, and the possibility that in the future product-specific legislation will also regulate the same issue (e.g. on robo-advice) might lead once again to over-lap issues.

Efficiency:

| Main category of impacts  |                             | Score |
|---------------------------|-----------------------------|-------|
| Consumer trust            |                             | 3     |
| Consumer detriment        |                             | 3     |
| Business compliance costs | One-off                     | -3    |
|                           | Recurrent                   | -2    |
| Member State costs        | One-off adaptation costs    | -1    |
|                           | Recurrent enforcement costs | -2    |

*Consumers:* Consumer trust will increase through the package of measures to improve transparency and consumer understanding (e.g. standard document, timing of the provision of pre-contractual information). Consumer organisations tend to favour a comprehensive revision of the Directive, as the improvements Option 2 proposes are necessary to ensure higher consumer protection. Indeed, most of the measures mentioned under this option have been mentioned by them in the different consultation strands. Such option should lead to around EUR 260-300 million in terms of reduction of consumer detriment.

*Business:* A comprehensive reform of the DMFSD would bring additional compliance costs to the financial service providers (one-off and recurrent) because of the new rules to be

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<sup>91</sup> I.e. if any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

complied with. In fact, the measures under this policy option would require service providers to familiarise themselves with new obligations (around EUR 90 million), adapt their IT systems (around EUR 52 million), train staff (around EUR 4 million), update their websites and update contracts (around EUR 60 million). It would also slightly increase costs for handling consumers' complaints (around EUR 27 million). The complete revision of the DMFSD would also include measures on the use of robo-advice for companies, which was estimated to around EUR 35 million. During the stakeholder consultation activities, stakeholders from the financial services industry pointed out that this Option would generate excessively high costs. The comprehensive reform of the DMFSD is the least supported option by financial services providers since they argue that the measures to be introduced under this option will outweigh the benefits. Thus, they did not favour this option since it would introduce disproportionate costs when compared to the benefits. According to the partial quantification exercise detailed in [Annex 4](#), such option would entail around EUR 230 million in costs for businesses.

*Public administration:* Option 2 is generally not supported by national authorities. It would require them to spend additional resources on adaption and enforcement costs (at least around EUR 12 million).

### **6.3. Option 3a: Repeal and modernisation of relevant provisions introduced in horizontal legislation**

This Option is effective in reaching the specific objectives, efficient, in particular for consumers, and ensures a high level of coherence.

Effectiveness:

| <b>Specific objectives (SOs)</b>   | <b>Rating</b> |
|--|---------------|
| SO 1: Simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive's relevant provisions are included in the most adapted regulatory legislation(s) | 3             |
| SO 2: Ensure that consumers purchasing financial services at distance are empowered by effective and timely information  | 4             |
| SO 3: Ensure that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services  | 3             |
| SO 4: Prevent that consumers are nudged into purchasing financial services which are not in their best interest  | 3             |
| SO 5: Reduce barriers for providers offering financial services across borders while enabling more choice for consumers  | 3             |

In this option, the DMFSD will be repealed and the relevant provisions will be modernised and injected in the Consumer Rights Directive. Thus, this Option is effective in reducing regulatory overlaps, it will eliminate all the irrelevant articles and establish a clear hierarchical provision on the lines of Article 3(2) Consumer Rights Directive.

The option would be effective in tackling SO 2, SO 3, SO 4 since the proposed measures<sup>92</sup> will improve and modernise the current rights still exercised by consumers. The scoring for SO2 is higher because the majority of the proposed measures under this option address the information problem and are measures already laid down in the Consumer Rights Directive, meaning that financial service providers can benefit from the recent amendments and improvements to the Consumer Rights Directive.

<sup>92</sup> Prohibition of default choices, adapting presentation of information to different distribution channels, improving clarity on when information should be presented to consumers, see [Section 5.2](#).



With regard to SO 5, this option is effective in the sense that since it conserves the safety net feature it ensures a level playing field between current and emerging products. The improvement in the regulatory framework and the clarification, through the hierarchical provision, will improve legal certainty for the sale of financial services at a distance. This, together with higher harmonisation (e.g. thanks to measures addressing behavioural biases) should then trigger more cross-border sales.

Since through this option the safety net will be safeguarded, the majority of consumer organisations, public authorities and half of the business associations expressed favour views in the validation workshop and scored positively in the survey run by the contractor working on the Support Study.

Coherence:

In terms of coherence, Option 3a scores 4. In this option, all the suggested measures are similar to provisions found predominantly in the Consumer Rights Directive and/or other financial services legislations or proposed legislation such as the Revision of the Consumer Credit Directive. The fact that the DMFSD will be repealed, thus one less legislation, and that the still relevant articles will be placed in another consumer horizontal legislation, ensures a high level of coherence. Moreover, the safety net feature for future financial services bought at a distance ensures coherence with EU policy objectives (“A Europe fit for the digital age”) and with the Article 169 TFEU.

Efficiency:

| Main category of impacts  |                             | Score |
|---------------------------|-----------------------------|-------|
| Consumer trust            |                             | 2     |
| Consumer detriment        |                             | 3     |
| Business compliance costs | One-off                     | -1    |
|                           | Recurrent                   | 0     |
| Member State costs        | One-off adaptation costs    | 0     |
|                           | Recurrent enforcement costs | -1    |

*Consumers:* The option is expected to overall have a positive effect on consumer trust by introducing new rules on how and when information should be presented and by limiting practices exploiting patterns of behaviour such as using default options. For the same reasons, the option would have a positive effect on reducing consumer detriment (at least EUR 170-210 million). While consumer organisations tend to prefer a comprehensive revision, at the validation workshop they confirmed they can support a repeal of the Directive if the relevant parts of the DMFSD are inserted in the Consumer Rights Directive. For consumer organisations, safeguarding the safety net feature is paramount. However, overlapping with other legislation might create some legal uncertainty which could lower consumer trust. This explains the slight difference in score between consumer trust and consumer detriment. Taking everything into account, it is considered that the policy option would have a positive impact on consumers.

*Businesses:* Adopting this policy option would incur additional one-off and recurring costs for businesses since measures under this policy option would require service providers to familiarise themselves with the improved Consumer Rights Directive, adapt their IT systems,



train staff, update their websites and update contracts. After the initial implementation of changes, the recurrent costs would be minor in comparison to a full revision of the DMFSD, since the complaint handling costs, which determine most of the recurrent costs for financial services, are accounted only in proportion of the relevance of the measures of the DMFSD to be merged in the horizontal legislation. In addition, this policy option does not include specific measures for robo-advice, decreasing the overall costs for companies. Adopting new rules for presenting pre-contractual information, removing pre-ticked boxes and updating contracts to include also the right of withdrawal mechanism would be done in the implementation phase. On the other hand, introducing more detailed rules on right to withdrawal could create more opportunities for consumers to submit complaints creating slightly higher costs for processing those complaints. However, the repeal would reduce costs in terms of communications to consumers which are higher because providers seem to send information twice to comply both with the DMFSD and with sector specific legislation. This would balance one off and recurring costs. According to the partial quantification exercise detailed in [Annex 4](#), such option would entail around EUR 19 million in costs for businesses. This option would also lead to higher cross-border trade.

*Public authorities:* This option would introduce some one-off and recurrent costs for national authorities (at least around EUR 6 million). Authorities would bear some transposition and implementation costs during the adoption phase, but the burdens would be low since the new provisions are minimal. Furthermore, additional monitoring and enforcement costs would be incurred due to introduction of new rules such as prohibition of default options (e.g. pre-ticked boxes) and adaptation of presentational rules for different distribution channels. Public authorities support modernising the current text concerning pre-contractual information. Public authorities also stated that they are familiar with the Consumer Rights Directive and incorporating parts of the DMFSD into the former would not be excessively complicated.

#### **6.4. Option 3b: Repeal and modernisation of relevant provisions introduced in product-specific legislation**

This option is effective in reaching the specific objectives, efficient in particular for public authorities and financial service providers and ensures a high level of coherence. Its drawback is the loss of the safety net feature.

##### Effectiveness:

| <b>Specific objectives (SOs)</b>   | <b>Rating</b> |
|--|---------------|
| SO 1: Simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive's relevant provisions are included in the most adapted regulatory legislation(s) | 3             |
| SO 2: Ensure that consumers purchasing financial services at distance are empowered by effective and timely information  | 3             |
| SO 3: Ensure that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services  | 2             |
| SO 4: Prevent that consumers are nudged into purchasing financial services which are not in their best interest  | 2             |
| SO 5: Reduce barriers for providers offering financial services across borders while enabling more choice for consumers  | 2             |

Option 3b envisages the repeal of the DMFSD and the injection of the still relevant articles into the different product-specific legislation. Therefore, the current regulatory overlaps will be eliminated and the legal framework would be simpler and clearer for stakeholders. Thus it

scores high vis-à-vis SO 1. The drawback of this option is that, by repealing the DMFSD, and not inserting it in another horizontal legislation, the safety net is lost, for both current products exempted from sector specific legislation and for new unregulated financial services. This loss of the safety net means that this option is moderately effective vis-à-vis SO 2, 3, 4 since, while, it modernises the still relevant rights which will be injected in the different product-specific legislation, it does not provide consumers with protection for products currently not covered by product specific legislation (e.g. credits below EUR 200) or if a new unregulated financial service appears on the market. SO 2 scores a point higher than SO 3 and SO 4 since the proposed measures under this option to address the information problem are more robust when compared to the measures proposed for SO 3 and SO 4.

This option has the potential to somewhat facilitate cross-border trade by removing regulatory overlaps. However, the loss of the safety net features entails risks to the cross-border provision since new products not subject to product-specific legislation would be unregulated. This would create an uneven playing field with current regulated products.

Coherence:

In terms of coherence, Option 3b scores 3. This option would eliminate overlaps between the DMFSD and product-specific legislation. However, the loss of the safety net feature for financial services bought at a distance lowers the level of consumer protection for future financial services which would not be captured by product-specific legislation. Thus renders this option not fully coherent with the goal set out in Article 169 TFEU and with EU policy objectives (“A Europe fit for the digital age”).

Efficiency:

| Main category of impacts  |                             | Score |
|---------------------------|-----------------------------|-------|
| Consumer trust            |                             | 1     |
| Consumer detriment        |                             | 2     |
| Business compliance costs | One-off                     | -1    |
|                           | Recurrent                   | 0     |
| Member State costs        | One-off adaptation costs    | 0     |
|                           | Recurrent enforcement costs | -1    |

*Consumers:* This option is expected to have an overall positive effect on consumer trust by introducing new rules for businesses on how and when information should be presented and by limiting practices exploiting patterns of behaviour such as using default options. For the same reasons, the option would have a positive effect on reducing consumer detriment (around EUR 130-160 million), but to a lesser extent compared to Option 3a because consumers buying financial services at a distance currently not covered by sector specific legislation might face detriment. Consumer association and some Member States participating in the validation workshop argue that the benefits brought by these improvements to the right to pre-contractual information and right to withdraw would be offset by loss of the safety net. The overall efficiency scores for both consumer trust and consumer detriment were lowered to reflect this fact.

*Businesses:* Adopting this option would incur one-off and recurrent costs for businesses in line with those mentioned for Option 3a. On the other hand, the repeal would reduce

recurrent costs in terms of communications to consumers which are higher because providers seem to send information twice to comply both with the DMFSD and with sector specific legislation. The net costs for financial services providers would be at least around EUR 39 million. Business associations and financial providers who still rely on the DMFSD with regards to the right of withdrawal and to a certain extent the right to pre-contractual information (because product specific legislation does not cover them), would support the repeal of the Directive but ensuring that the consumer rights are modernised and introduced in product-specific legislation.

*Public administration:* This option would introduce some one-off and recurrent costs for national authorities (at least around EUR 6 million). Authorities would bear some transposition and implementation costs during the adoption phase, but the burdens would be low since the new provisions would be merged into existing vertical legislation. Furthermore, additional monitoring and enforcement costs would be incurred due to introduction of new rules such as prohibition of default options (e.g., pre-ticked boxes) and adaptation of presentational rules for different distribution channels

## 7. HOW DO THE OPTIONS COMPARE?

This section compares the performance of the five policy options considered, based on the elements developed in [Section 6](#).

### 7.1. Effectiveness

The considered policy options would achieve specific objectives to different extents.

*Table 4. Effectiveness (from -5 i.e. very low effectiveness to 5 i.e. very high effectiveness)*

| Specific Objectives (SO) | Option 0 (Baseline) | Option 1 | Option 2 | Option 3a | Option 3b |
|--------------------------|---------------------|----------|----------|-----------|-----------|
| SO 1                     | 0                   | 3        | -1       | 3         | 3         |
| SO 2                     | 0                   | -1       | 4        | 4         | 3         |
| SO 3                     | 0                   | -2       | 4        | 3         | 2         |
| SO 4                     | 0                   | 0        | 4        | 3         | 2         |
| SO 5:                    | 0                   | -1       | 3        | 3         | 2         |

Since all the specific objectives are equally important, it was decided not to differentiate in terms of weighting. The combination of all five specific objectives would lead to benefits for stakeholders.

**According to our analysis, Option 3a scores best in terms of effectiveness.**

In terms of the specific objectives related directly to the provisions providing consumers with rights (SO 2, SO 3, SO 4) Option 2 scores highest, followed by Option 3a (which scores equal to Option 2 as regards SO2 because of the breadth of the measures it entails to tackle the information problem). This is the result of the fact that Option 2 provides a larger number of measures to modernise the right of withdrawal and better addresses new practices exploiting consumer biases. While Option 3a and 3b contain the same measures, the safety net feature is lost in Option 3b. Hence, Option 3b scores a bit lower than Policy Option 3a for SO 2, 3, 4. The repeal of the Directive (Option 1) would lower the consumer protection

currently provided by the DMFSD, since, as explained in [Section 2](#), it still is relevant for certain financial services. Repeal will also mean that there is no safety net feature for financial services.

The loss of the safety net feature also explains the difference between the score of SO 5 between Option 3a and 3b. In fact, its loss entails risks to the cross-border provision since, as highlighted by stakeholders, products currently not covered by sector specific legislation or new products not subject to product-specific legislation would be unregulated. This would create an uneven playing field with current regulated products. The repeal of the Directive envisaged under Option 1 would create harmonisation gaps which would have also an indirect effect on cross-border trade: consumers would feel less certain regarding own rights in purchasing financial services from cross-border provider. Option 2 and 3 are moderately effective to reduce barriers since they will increase consumer trust.

However, while Option 2 will indeed increase consumer trust, since it will include a large number of new provisions crossing across all financial services (e.g. rules on robo-advice) it will not simplify the current framework (SO 1). Option 2 will entail a large number of provisions. Some of its measures, for example the burden for all financial services to provide a standard information form, might create confusion with current rules already found in the product-specific legislation (e.g. in PAD). Moreover, the numerous new additions to its framework, and the possibility that in the future product-specific legislation will also regulate the same issue (e.g. on robo-advice) might lead once again to over-lap issues. On the other hand, the repeal of the Directive will eliminate any possible overlaps. The difference between Option 3a and 3b with regards to SO1 is that, while the former will reduce the current overlap through the inclusion of a clear hierarchical provision clearly explaining the *lex specialis/lex generalis* situation, it will reduce and not eliminate potential overlaps. In Option 3b, the issue of overlapping is eliminated.

## 7.2. Coherence with other EU legislation and policy objectives

Each option's coherence with other EU legislation and EU policy objectives, including the Treaty (TFEU) and with other policy initiatives and instruments, has been assessed based on a thorough legal analysis. Considerations about legal clarity have also be taken into account.

*Table 5. Coherence (from 0 i.e. no change to the level of legal coherence to 5 i.e. increase of EU legal coherence to a very great extent)*

| Option 0 (Baseline) | Option 1 | Option 2 | Option 3a | Option 3b |
|---------------------|----------|----------|-----------|-----------|
| 0                   | 2        | -1       | 4         | 3         |

Improving the Directive's **coherence** is one of the **key issues of the initiative**. Addressing problem 1 (lack of coherence and decreased relevance) and the related problem driver (over-lap and vague terms) is of fundamental importance for all stakeholders. In this light, the coherence criteria is very important for this Impact Assessment.

Under the coherence criteria, Option 3a scores best since it will establish a clear hierarchical norm to regulate the issue of over-laps with product specific legislations, proposes measures that are similar to provisions found predominantly in the Consumer Rights Directive and/or other financial services legislations or current Commission proposal, and safeguards the safety net feature. The loss of the safety net feature in Option 3b and Option 1 means that

consumers would be deprived of their rights with regard to financial services bought at a distance which are not captured by product-specific legislation. This fact renders these options not fully coherent with the goal set out in Article 169 TFEU and the Commission's priority to ensure a 'Europe fit for the digital age'. However, Option 1 and 3b score differently because the latter would ensure higher coherence with the goal of Article 169 TFEU. Option 2 scores slightly negatively because even though it would keep the safety net feature, apart from the introduction of a hierarchical norm, it would perpetuate the current concerns and issues with the DMFSD's framework.

### 7.3. Efficiency

In order to assess the efficiency of the options, a partial quantitative assessment was carried out, based on the analysis of the monetisable impacts and of a selection of policy measures for which enough quantitative evidence was gathered. The partial quantification was complemented with the opinions of stakeholders participating to the interviews, surveys and workshop in order to get the final assessment of the efficiency of the options.

#### Partial quantification

This table presents the costs/benefits for stakeholders for each option (see [Annex 4](#) for a detailed breakdown). The quantitative assessment assumes a range of increased effectiveness of the individual policy measures: a small increase in effectiveness (lower bound) and a higher increase in effectiveness (higher bound).

*Table 6. Partial quantification exercise (EUR million) – costs in parenthesis*

|   | Policy Option 1 | Policy Option 2 | Policy Option 3a | Policy Option 3b |
|---|-----------------|-----------------|------------------|------------------|
| <b>Public Authorities (PA)</b>  |                 |                 |                  |                  |
| Total one-off costs for PA  | 0,0             | (1,6)           | (0,8)            | (0,8)            |
| Total recurrent costs for PA  | 0,0             | (10,2)          | (5,1)            | (5,1)            |
| <b>Total costs for PA (A)</b>   | <b>0,0</b>      | <b>(11,8)</b>   | <b>(5,9)</b>     | <b>(5,9)</b>     |
| <b>Financial Services providers (FS)</b>  |                 |                 |                  |                  |
| Total one-off costs for FS  | (90,3)          | (206,7)         | (103,4)          | (103,4)          |
| Total recurring costs for FS  | 0,0             | (62,3)          | (13,7)           | (13,7)           |
| <b>Total costs for FS</b>   | <b>(90,3)</b>   | <b>(269,0)</b>  | <b>(117,0)</b>   | <b>(117,0)</b>   |
| <b>Total benefits<sup>93</sup> for FS</b> (reduced recurrent communications to consumers) | <b>97,7</b>     | <b>0,0</b>      | <b>97,7</b>      | <b>97,7</b>      |
| <b>Net costs for FS (B)</b>   | <b>(7,4)</b>    | <b>(269)</b>    | <b>(19,3)</b>    | <b>(19,3)</b>    |
| <b>Consumers</b>  |                 |                 |                  |                  |
| <b>Consumer detriment (C)</b>   | <b>(559,7)</b>  |                 |                  |                  |
| <b>Total consumer benefits (lower bound) (D)</b>  | <b>42</b>       | <b>258</b>      | <b>198</b>       | <b>179</b>       |
| <b>Total consumer benefits (higher bound) (E)</b>   | <b>48</b>       | <b>297</b>      | <b>231</b>       | <b>208</b>       |
| <b>Total estimates (lower bound) (A+B+C+D)</b>  | <b>(510)</b>    | <b>(23)</b>     | <b>173</b>       | <b>153</b>       |
| <b>Total estimates (higher bound) (A+B+C+E)</b>   | <b>(504)</b>    | <b>16</b>       | <b>206</b>       | <b>183</b>       |

<sup>93</sup> In terms of reduced recurrent communications with consumers.

Each policy option would generate costs and benefits for the different categories of stakeholders. However, as shown in the table above, the costs for Policy Options 3a and 3b for Public Authorities and for Financial Service providers are estimated to be the same. This similarity is due to the fact that the same measures are foreseen for both options; however, what differs is the way of how to inject the relevant provisions of the DMFSD, namely through a horizontal instrument (Option 3a) or in the product specific legislation (Option 3b). Such different approach in the implementation should have an effect on consumers' protection since, as previously mentioned, only a horizontal implementation would maintain the “safety net” role of the EU regulatory approach.

In particular:

- **Option 1: Repeal of the DMFSD** – this policy option would generate a total cost estimated above 500 Million euros in consumer detriment as a result of the loss of the expected benefits of the DMFSD (baseline). These costs could be reduced in case of effective self-regulation of the industry (not monetised) or increase in case of national law to reduce consumer protection due to the absence of the DMFSD at EU level.
- **Option 2: Improve the DMFSD based on identified issues (Comprehensive revision)** – this policy option, according to our calculations, would generate a positive net benefit in the period 2022-2031. This option foresees an increased burden for financial services providers, which should be compensated by the increase of consumer protection. This small positive net benefit calculated in our estimates, however, could easily also be a negative net cost in case of slightly higher costs for businesses or lower benefits for consumers.
- **Options 3(a) and 3(b): Repeal, modernisation of relevant provisions introduced in horizontal legislation** – these policy options are the most balanced in terms of efficiency amongst the ones taken into consideration. According to the monetised impacts, these options would generate a moderate level of costs for public authorities and financial services while bringing a relatively high reduction of consumer detriment generating a positive net benefit in the period taken into account. However, while Option 3a foresees the integration of the measures of the DMFSD still relevant into a horizontal legislation (i.e. the Consumer Rights Directive), which would apply also to financial services currently not covered by specific legislation (e.g. gift cards), Option 3b foresees the integration of these measures in each product specific legislation which would allow for a standard protection for consumers only for already covered financial products. Hence, the benefits for policy option 3(b) have been accounted not fully (at 90% of their value) to take into account of the absence of the “safety net” feature of the DMFSD or that a horizontal consumer protection legislation would bring.

#### Qualitative assessment

The results of the qualitative assessment build on stakeholders' views in the various consultations and takes into account the results of the quantitative estimates.

*Table 7. Efficiency (from -5 i.e. very negative impact to 5 i.e. very positive impact)*

|                             | Impacts                         | Option 0 (Baseline) | Option 1 | Option 2 | Option 3a | Option 3b |
|-----------------------------|---------------------------------|---------------------|----------|----------|-----------|-----------|
| Financial Service Providers | Compliance costs: one-off costs | 0                   | 0        | -3       | -1        | -1        |
|                             | Compliance costs:               | 0                   | 1        | -2       | 0         | 0         |



|                           | recurrent costs                        |          |           |          |          |          |
|---------------------------|--|----------|-----------|----------|----------|----------|
| <b>Consumers</b>          | Consumer trust                         | 0        | -3        | 3        | 2        | 1        |
|                           | <b>Reduction in consumer detriment</b> | <b>0</b> | <b>-4</b> | <b>3</b> | <b>3</b> | <b>2</b> |
| <b>Public authorities</b> | Adaptation costs: one-off costs        | 0        | 0         | -1       | 0        | 0        |
|                           | Enforcement costs: recurrent costs     | 0        | 0         | -2       | -1       | -1       |

Based on the magnitude of the impacts, the main ones to be looked at are the reduction in consumer detriment and one off and recurrent costs for financial services providers.

Comparing those categories of costs and benefits, the best performing option is Option 3a. Option 3a scores a higher value also looking at other impacts. It would ensure positive outcome for consumers and not entail excessive costs. It is differentiated from Option 3b because of the importance of maintaining a “safety net” for consumers.

In particular, stakeholders see positively the role of “safety net” of the DMFSD which would be kept only for Options 2 and 3a. However, in case of complete revision of the DMFSD with the addition of measures aimed at increasing consumer protection, the benefits for consumers are counterbalanced by the higher expected costs for financial service providers.

#### 7.4. Comparison of options and proportionality

To compare the options we looked at the best performing one for each of the three criteria considered. It was decided not to attribute different weightings to the criteria, because we consider they were all equally important. The coherence criteria is as much relevant as the other two in this impact assessment, considering the decreased relevance of the DMFSD because of the introduction of product specific and horizontal legislation. In addition, Option 3a scores best under all three criteria and thus the attribution of different weightings would not have had any impact.

Table 8. Ranking of policy options (from 1= better performing to 4=worst performing)

|          | Assessment  | Ranking |
|----------|---|---------|
| Option 1 | Option 1, through the repeal of the Directive, will eliminate the current over-lap between the DMFSD and product-specific legislation, thereby simplifying the existing legislative framework and, at the same time, ensuring a moderate level of ‘coherence’. However, this option scores poorly under effectiveness and efficiency since it would lead to the lowering of consumer protection and opens the way for possible uneven level playing field between current products and future products due to the loss of the safety net feature.<br>Effectiveness: 4 <sup>th</sup>   Efficiency: 4 <sup>th</sup>   Coherence: 3 <sup>rd</sup>  | 4       |
| Option 2 | Option 2 would address the initiative’s specific objectives related to the right to pre-contractual information, the right to withdrawal and practices exploiting behavioural biases in a very effective way. However, in terms of efficiency, the impact of its measures on stakeholders would vary, from clearly positive for consumers, to seriously negative for businesses (significant compliance costs) and public administrations (enforcement and adaptation costs). Due to the comprehensive nature of the measures, the coherence with other legislations will not be improved when compared to the baseline.<br>Effectiveness: 2 <sup>nd</sup>   Efficiency: 3 <sup>rd</sup>   Coherence: 4 <sup>th</sup> | 3       |

|           |   |   |
|-----------|---|---|
| Option 3a | Option 3a comes first in all of the three criteria. It is very effective in reaching the specific objectives, efficient, and ensures a high level of coherence.<br>Effectiveness: 1 <sup>st</sup>   Efficiency: 1 <sup>st</sup>   Coherence: 1 <sup>st</sup>  | 1 |
| Option 3b | Option 3b is effective in reaching the specific objective of simplifying the legislative framework since it will result in the repeal of the Directive, and quite effective in reaching the others. It is efficient and ensures a high level of coherence. Its drawback is the loss of the safety net feature.<br>Effectiveness: 3 <sup>rd</sup>   Efficiency: 2 <sup>nd</sup>   Coherence: 2 <sup>nd</sup> | 2 |

The performed analysis highlights that **Option 3a ranks first in all three criteria**. The legislative technique proposed for Option 3a safeguards the ‘safety net’ feature which stakeholders from all sectors believe is useful and helpful. In fact, the safeguarding of the safety net allows Option 3a to ensure more coherence with other EU legislation and policy in a wider sense. Option 3a will not eliminate completely possible overlaps; however, through the deletion of most of the current provisions and, proposing the modernisation of two fundamental consumer rights i.e. right to pre-contractual information and right of withdrawal, and the clear hierarchical norm specifying the *lex specialis/lex generalis* relationship between the Directive and product-specific legislation, it will bring more legal certainty and legal clarity compared to base-line. The cost of the measures proposed for financial service providers and public authorities on the basis of the partial quantification conducted, should be limited; the option should result in a net benefit for consumers and lead to increased cross-border trade.

In accordance with the principle of **proportionality**, the proposed rules will not go beyond what is necessary in order to achieve the objectives set out in [Section 4](#). While it might seem logical that the Option 1 (repeal and introduction of non-regulatory measures) would respect best the principles of proportionality and subsidiarity, when taking into consideration the cost of non-Europe, the result is that this option is the least effective and least efficient. The initiative will cover only the aspects that Member States cannot achieve on their own and where the administrative burden and costs are commensurate with the specific and general objectives to be achieved.

As such, proportionality will be embedded in the provisions of the Directive. The measures proposed under Options 3a are minimal and are already found in other legislations or in the Commission proposal revising the Consumer Credit Directive. Considering the current and future level of relevance of the Directive, the minimalist approach to modernisation respects the principle of proportionality.

## 8. PREFERRED OPTION

### 8.1. Option 3a: Repeal and modernisation of relevant provisions introduced in horizontal legislation

Based on our analysis and explanation above, the preferred option is 3a - **Repeal, modernisation of relevant rights injected in horizontal legislation, namely the Consumer Rights Directive (CRD)**. This policy option tackles the three identified problems and addresses the objectives in the most effective, efficient and proportionate way. Moreover it ensures a high level of coherence. The proposed legal intervention sanitizes the current framework by repealing the provisions that have lost relevance, modernising the relevant consumer rights concerning the right to pre-contractual information and the right of

withdrawal and injecting them into the CRD. Certain articles of the CRD will also extend to distance marketing of financial services. In so doing, **the minimalist approach to this legal revision ensures a high level of consumer protection, renders the relevant rights fit for the digital age, and safeguards, as requested by all stakeholders, the safety net feature for possible future emerging products.**

This preferred option **will lead to the repeal of the current legislation without the creation of a new legal instrument.** The CRD was chosen as the appropriate instrument since, similar to the DMFSD, it provides horizontal consumer rights and rules. Thus, **injecting the DMFSD relevant rights in the Consumer Rights Directive ensures that the safety net feature is safeguarded.** The Consumer Rights Directive, whilst as of today excludes from its scope ‘financial services’, already provides for the right to pre-contractual information and the right of withdrawal; thus, applying these two rights to financial services within the CRD will fit well. Special attention will be provided, on the one hand, to ensure the required specificity of financial services, and on the other hand, to ensure that the CRD is not rendered too complex. The best way to proceed would be align, as far as possible, rules already laid down in the CRD to financial services. When this is not possible, and in an effort not to render the current CRD framework unnecessarily complex, a dedicated chapter to financial services will be added to the CRD. This added chapter will concern only financial services and will not extend to the current CRD rules concerning other services and goods. A review of this methodology will take place in line with the standard period for normal legislative proposals, thus within 5 years. **It is also worth keeping in mind that the recent Commission Proposal<sup>94</sup> on empowering consumers for the green transition also proposes to amend the CRD. Thus, the objective is to carry out the review within the same time-line.**

The preferred option is deemed to be effective in tackling the problems identified and in achieving the initiative’s objectives.

- The **repeal of the DMFSD itself**, the **inclusion of a clear hierarchical norm** explaining the *lex generalis/lex specialis* relationship (already set out in a clear manner in Article 3(2) of the CRD) and the **injection of the still relevant rights in the Consumer Rights Directive** will simplify the existing legal framework by removing regulatory overlaps and ensure that the Directive’s relevant provisions are included in the most adapted regulatory legislation (SO1). This course of action will also ensure a level playing field for financial services providers across borders while enabling more choice for consumers (SO 5) since the safety net is kept, thereby subjecting emerging products to EU legislation.
- The **modernisation of the still relevant right to pre-contractual information and the right to withdrawal** through:
  - the **updating of the provision setting out the required content of information to be included by the provider at the pre-contractual stage**, for instance the inclusion of the email address which is missing from the current DMFSD;
  - the requirement that the **pre-contractual information** to be provided to the consumer is **adapted to the channel on which it is displayed**;

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- the requirement that the pre-contractual information is to be provided at least 24 hours before the actual signature of the financial service, and, if signed within less than 24 hours, an obligation on the financial provider to inform the consumer of the right to withdraw from the contract;

It will ensure that consumers purchasing financial services at distance are empowered by effective and timely information (SO 2) and that consumers reflect on their purchases and exit unsuitable agreements for the provision of financial services (SO 3).

The **prohibition of default options** such as pre-ticked boxes will prevent consumers from being nudged into purchasing financial services which are not in their best interest (SO 4).

The above described **measures are all measures** which are similar to measures already found in current legislation or in legislative proposals. The updating of the content to be provided at pre-contractual stage corresponds to what is already found in Article 6 (Information requirements for distance and off-premises contracts) of the Consumer Rights Directive. Adapting information to the channel corresponds to Article 8 (Formal requirements for distance contracts) of the Consumer Rights Directive. And the timing of pre-contractual information coupled possibly with a reminder of a right of withdrawal corresponds to Article 10 (Pre-contractual information) of the Commission Proposal to revise the Consumer Credit Directive.

**This minimalist approach to modernising the current relevant DMFSD rights** and the inclusion of a clear hierarchical provision **ensure** that the **coherence** with other EU relevant legislations and policies will be improved.

Since the preferred option repeals the DMFSD, injects the still relevant parts in the Consumer Rights Directive, and safeguards the safety net feature, the protection of consumers granting credit through peer-to-peer lending platforms is not addressed by this initiative. This issue is too specific to fit the logic of the proposal and the horizontal nature of the Directive.

Option 3a would also have a positive effect on the reduction of consumer detriment (at least EUR 170-210 million) and on consumer trust. It would entail some costs for financial services providers (at least around EUR 19 million) and for public authorities (at least around EUR 6 million).

## 8.2. REFIT (simplification and improved efficiency)

The review of the Directive was included among the Adjusted Commission Work Programme REFIT initiative 2020.<sup>95</sup> In this context, the report has analysed how the current legal framework could be simplified, improve the efficiency and decrease administrative burden, in line with the Better Regulation rules and guidelines. The following actions under Option 3a should lead to such higher efficiencies:

| Description   | Amount   | Comments   |
|---|--|--|
| The repeal of the Directive ensures that the non-relevant articles (e.g. ban on unsolicited communications) will not be | Approximately EUR 97,7 million in savings linked | These two actions will simplify the legislative framework, thereby improving efficiency and reducing regulatory costs for financial service providers and public authorities. Concretely, for financial service providers, this simplification |

<sup>95</sup> Annexes to the Adjusted Commission Work Programme 2020, Brussels, 27.5.2020 COM(2020) 440 final.

|   |   |   |
|---|---|---|
| <p>injected into the Consumer Rights Directive. This will reduce the number of articles that need to be complied with.</p> <p>A hierarchical provision, on the basis of Article 3(2) (Scope) of the Consumer Rights Directive, will regulate the overlap issue between the Directive and product-specific legislation. This provision will clarify which legislation applies through <i>the lex generalis/lex specialis</i> norm.</p> | <p>to reduced communication s to consumers because the overlap with sector specific legislation would be clarified.</p> | <p>translates, in the arch of the period 2022-2031, into less administrative burden thanks to a clearer application of the legislation, less costly compliance activities, lower need of specialized legal support to ensure that the revised practices are in line with the new legislation and, possibly, a lower number of consumer complaints to deal with.</p> <p>For public administrations, the higher degree of legal clarity and the simplified regulatory framework applicable to the distance marketing of financial services should lead to a reduction of the issues faced by consumers (which as of 2018, ranged between 4% and 8% of the financial services purchased) and thus proportionally decreasing the number of complaints.</p> <p>Consumers too will benefit from such simplification (for instance, due to the current overlap, certain financial providers present consumers with two sets of pre-contractual information, one based on the DMFSD, one based on the product-specific legislation. Through Option 3a, this should no longer take place).</p> |
| <p>Clearer regulatory framework leading to increase of cross-border provision of financial services and increased consumer choice</p>   | <p>Approximately EUR 40 million</p>   | <p>A harmonised regulatory framework would lead to higher consumer trust and to an increase of the number of consumers that purchase at better conditions from non-national providers.</p>  |

Beyond these simplifications and higher efficiencies, this initiative endeavours to keep regulatory burdens to the minimum necessary both for businesses and Member States to what is strictly needed to ensure a high level of consumer protection and foster the provision of cross-border financial services. Option 3a proposes measures that are similar to measures in other legislative texts or legislative proposals and are limited in number. The costs to be incurred by financial providers and public authorities are mostly one-off costs which will be compensated by larger long-term benefits. For instance, the burden reduction of **adapting information requirements for digital use** has an initial cost but once these have been prepared, it could be less burdensome to provide these online. Just for the consumer credit sector, the Impact Assessment accompanying the revision of the Consumer Credit Directive held that the **burden reduction** could ultimately impact **over 25 million personal bank loans annually bought at a distance**.

In conclusion, all the ongoing work related to financial services under other initiatives has been and will be duly taken into account to avoid overlaps and overregulation.

## 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The Commission will monitor the implementation of the preferred policy option, i.e. the repeal of the DMFSD and the modernisation of its relevant provisions injected in horizontal legislation, if adopted and in line with the specific objectives identified in this Impact Assessment. Table 10 presents a list of monitoring indicators that will help evaluating whether the preferred policy option is successful in achieving these specific objectives. These indicators will then serve as a basis for the next evaluation that should be presented at the latest five years after the entry into force of the present initiative.

The draft proposal will contain a commitment to evaluate the impacts of the new legislative act. The Commission will start monitoring the implementation of the preferred policy option after the entry into force of the initiative.

*Table 10. Monitoring indicators for the specific objectives*

| <b>SOs</b> | <b>Monitoring indicators</b>   | <b>Data sources</b>   | <b>Actors responsible for data collection</b>  |
|------------|--|---|--|
| SO1        | <ul style="list-style-type: none"> <li>■ Number/proportion of relevant DMFSD provisions modernised</li> <li>■ Number/proportion of relevant DMFSD provisions injected in the CRD</li> </ul>  | <ul style="list-style-type: none"> <li>■ Legal analysis</li> <li>■ Member States experts on the DMFSD</li> </ul>  | <ul style="list-style-type: none"> <li>■ European Commission</li> <li>■ Member States</li> </ul> |
| SO2        | <ul style="list-style-type: none"> <li>■ Number/proportion of consumers who deem they were provided with effective and timely information on purchased product</li> <li>■ Number/share of consumer complaints associated with information in distance purchases of financial services</li> </ul>   | <ul style="list-style-type: none"> <li>■ Enforcement authorities/CPC</li> <li>■ Stakeholder surveys/interviews</li> <li>■ Consumer and creditor surveys</li> <li>■ Mystery shopping exercises (e.g. through EBA)</li> <li>■ Member States experts on the DMFSD</li> </ul> | <ul style="list-style-type: none"> <li>■ European Commission</li> <li>■ Member States</li> </ul> |
| SO3        | <ul style="list-style-type: none"> <li>■ Number of reminders on the possibility to exercise the right of withdrawal sent by the financial services providers to the consumer per agreement</li> <li>■ Number/share of consumers who used their right of withdrawal to exit unsuitable agreements</li> <li>■ Number/share of consumer complaints associated with the right of withdrawal in distance purchases of financial services</li> </ul> | <ul style="list-style-type: none"> <li>■ Enforcement authorities/CPC</li> <li>■ Stakeholder surveys/interviews</li> <li>■ Consumer and creditor surveys</li> <li>■ Mystery shopping exercises (e.g. through EBA)</li> <li>■ Member States experts on the DMFSD</li> </ul> | <ul style="list-style-type: none"> <li>■ European Commission</li> <li>■ Member States</li> </ul> |
| SO4        | <ul style="list-style-type: none"> <li>■ Level of consumers' trust in distance purchases of financial services</li> <li>■ Number/share of consumer complaints associated with practices exploiting consumer biases in distance purchases of financial services</li> </ul>  | <ul style="list-style-type: none"> <li>■ Enforcement authorities/CPC</li> <li>■ Stakeholder surveys/interviews</li> <li>■ Consumer surveys</li> <li>■ Mystery shopping exercises (e.g. through EBA)</li> </ul>  | <ul style="list-style-type: none"> <li>■ European Commission</li> <li>■ Member States</li> </ul> |
| SO5        | <ul style="list-style-type: none"> <li>■ Number/proportion of cross-border distance purchases of financial services</li> <li>■ Number/type(s) of products financial services providers offer as part of distance purchases of financial services</li> </ul>  | <ul style="list-style-type: none"> <li>■ Market studies</li> <li>■ Eurobarometer</li> </ul>   | <ul style="list-style-type: none"> <li>■ European Commission</li> </ul>                          |



## ANNEXES

## ANNEX 1: PROCEDURAL INFORMATION

### 1) Lead DG, DEcide Planning/CWP references

- LEAD DG: DG JUSTICE AND CONSUMERS
- DECIDE PLANNING: PLAN/2020/7021
- CWP 2020 - ANNEX II (REFIT INITIATIVE NO. 43)<sup>96</sup>

### 2) Organisation and timing

The impact assessment took place between March 2021 and November 2021 and was announced in the 2020 Commission Work Programme – Annex II Refit Initiatives. It was carried out by Unit E1 "Consumer Policy" of the Commission, DG Justice and Consumers.

Representatives from the Secretariat General (SG), the Legal Service (SJ), DG Justice and Consumers (JUST), DG Financial Stability, Financial Services and Capital Markets Union (FISMA), DG Competition (COMP), DG Communications Networks, Content and Technology (CNECT), DG Economic and Financial Affairs (ECFIN), DG Employment, Social Affairs & Inclusion (EMPL) and DG Internal Market, Industry, Entrepreneurship and SMEs (GROW) were appointed to the Interservice Steering Group.

The Interservice Steering Group met two times between May 2021 and November 2021. The first meeting was held on 27 May 2021 and the second meeting on 3 November 2021.

### 3) Consultation of the RSB

An upstream meeting was held with the Regulatory Scrutiny Board (RSB) on 4 June 2021, to informally discuss questions concerning how to prepare the best possible report for the Directive's revision. The draft of the impact assessment was submitted to the RSB on 10 November 2021 and discussed at the RSB hearing of 8 December 2021. The RSB delivered a POSITIVE opinion on 10 December 2021.

The comments formulated by the Board were addressed and integrated in the final version of the impact assessment. The two tables below present the elements of the RSB opinion and how the report has been updated to take them into account.

| <b><u>Main issues raised by the RSB in its opinion and related updates</u></b>  |
|---|
| <b>(1) The report does not present the options nor their structure and content in sufficient detail. It does not explain why options without the safety net are not discarded.</b>  |
| Related updates: <ul style="list-style-type: none"><li>• The Revised IA Report clarifies the overall options and structure/content in more detail by explaining in the introductory party of Chapter 5 ('What are the available options) the narrative and steps taken in order to device the options and structure. The opinion of the different stakeholders has been added in order to illustrate their respective support to certain policy options.</li><li>• In this introductory explanation, and through the support the different options obtained from the different stakeholders, an explanation is given why the options that do not include the safety net</li></ul> |



<sup>96</sup> COM(2020) 440 final, Annexes.

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| <p>were not discarded. In this light, the part on options discarded at an early stage is also strengthened.</p> <ul style="list-style-type: none"> <li>Under Chapter 5.2 (Description of the Policy Options) the content of the respective policy options has been described in greater detail, in particular Policy Option 1. In this light, the corresponding Table 5 (Proposed measures per Policy Option covering financial services) has also been improved.</li> </ul>  |
| <p><b>(2) The report does not sufficiently assess impacts on business. It does not explain estimates and is not clear about limitations</b></p>   |
| <p>Related updates:</p> <ul style="list-style-type: none"> <li>The Revised IA Report has strengthened the impact analysis. It provides further analysis and explanation related to the cost to businesses and consumer detriment in Chapter 6 ('What are the impacts of the policy options').</li> <li>The Revised IA Report has improved the monetisation of consumer empowerment through the calculation of consumer detriment by summarising the detail in annex 4 in the main body of the Revised IA Report and the 'cost-of non-Europe' has been integrated into the analysis.</li> <li>The Revised IA Report has further elaborated on the burden reductions or costs that the proposed measures will entail under the respective policy options, including for businesses.</li> <li>The estimates have been clarified and the limitations of the figures explained.</li> </ul> |

| <b>Specific improvements requested by the RSB</b>  | <b>How the RSB comments have been addressed in the revised IA report</b>   |
|--|--|
| <p>(1) The problem analysis should assess potential risks (e.g. data protection, discrimination) associated with the access by Big tech companies to personal data when providing financial services at a distance as this may affect both fair competition in affected markets and consumer trust</p>   | <p>This issue has been further developed under the problem description chapter and the subsidiarity chapter.</p>   |
| <p>(2) The report should clarify the content and structure of the policy options. It should explain why options differ not only in the envisaged legal delivery instrument, but also contain different approaches to modernise and update the provisions of the current DFMSD. It should explain how these are linked to the different legal delivery instruments. The most ambitious modernisation option should be more specific on the precise measures it would include.</p> | <p>Cf main issue 1<br/>Content and structure of each policy option has been explained in further detail;<br/>Better explanation of the options in the introductory narrative, spelling out how and why the options differ in content and in envisaged delivery instrument.<br/>The precise measures of the most ambitious option (Option 2) have been further explained.</p> |
| <p>(3) The report should better explain why it does not discard options without the safety net upfront. The problem description demonstrates that the safety net ensures an important element of trust. Without it the options risk to be ineffective on the consumer protection objectives.</p>   | <p>Cf main issue 1<br/>The Revised IA Report explains the methodology that was applied when conducting the Report and in so doing, explains why the options that do not contain the safety net could not be discarded upfront.</p>   |
| <p>(4) The report should explore whether including DFMSD provisions in the Consumer Rights Directive may result in unintended consequences such as increased complexity of the Consumer Rights Directive</p>   | <p>This point has been addressed in two parts of the Revised IA Report: (i) under the description of the policy option that suggests the inclusion of current DMFSD provisions in the Consumer Rights Directive, and (ii) when describing the preferred option.</p>  |
| <p>(5) The report should strengthen the impact analysis.</p>   | <p>A short section dedicated to SME has been included</p>  |

|   |   |
|---|---|
| In particular, it should provide further explanation related to the cost to businesses, potential consumer detriment and the impact on SMEs   | in Annex 3.   |
| (6) The report should provide more detail on the assumptions underpinning estimates (e.g. artificial 10% reduction of the consumer benefit in absence of the safety net), the data sources and the calculation methods for all key estimates, in particular the calculation of costs and benefits. It should present clearly the limitations and how they are addressed | Cf main issue 2<br>The report has added the requested detail, in particular concerning the assumptions, such as the 10% reduction, the data sources and the calculation methods.  |
| (7) The report should be more specific on the timeframe for the evaluation of the newly included provisions in the Consumer Rights Directive.<br><br>Some more technical comments have been sent directly to the author DG.   | The Revised IA Report indicates that the timeframe for the evaluation of the newly included rights will be in synch with another Commission Proposal that also intends to amend the Consumer Rights Directive<br><br>Other technical comments have be taken into account, including the revision of the Table: Overview of Benefits – Preferred Option. |

#### 4) Evidence, sources and quality

For the purpose of this impact assessment, Commission services collected data through various sources and consultation strands (see also [Annex 2](#)).

The impact assessment relies and builds on the Evaluation of the Directive, which took place in 2018-2019 and was announced in the 2019 Commission Work Programme. To this end, the Commission published an Evaluation Staff Working Document and an Executive Summary of the Evaluation.<sup>97</sup> The Evaluation of the Directive received a positive opinion from the RSB.

The Commission published the Inception Impact Assessment of the Directive and received [public feedback](#) on it from 28 May 2021 to 25 June 2021.

The Commission also based the impact assessment on the evidence gathered from the [Open Public Consultation](#) on the “Distance marketing of consumer financial services – review of EU rules”, which was held from 22 June 2021 to 28 September 2021.

The Commission also consulted its dedicated Member State Expert Group on the Implementation of the Consumer Credit Directive, specifically to discuss the Review of the Distance Marketing of Financial Services Directive (June 2021).

<sup>97</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2002-Distance-Marketing-of-Financial-Services-evaluation-of-EU-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2002-Distance-Marketing-of-Financial-Services-evaluation-of-EU-rules_en).

The Commission had previously outsourced to an external contractor a study supporting the Evaluation of the Directive, whose final report was also published (2020).<sup>98</sup>

In 2021, the Commission outsourced a new supporting study to provide sound evidence and analysis for preparing this impact assessment for potential EU action to revise the Directive. A contract for expert advice for impact assessment analyses to be conducted in the context of the legislative initiative under the New Consumer Agenda was outsourced and a professor was appointed.

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<sup>98</sup> See [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/distance-marketing-financial-services\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/distance-marketing-financial-services_en).

## ANNEX 2: STAKEHOLDER CONSULTATION – SYNOPSIS REPORT

### 1) Introduction and consultation strategy

#### a. *Objective of the consultation*

The stakeholder consultation collected information and feedback on various aspects of the possible revision of the DMFSD from a wide range of key stakeholders representing consumers, retail financial services providers, national authorities, and other relevant interest groups. It included semi-structured interviews, a follow-up online survey, the analysis of the feedback to the Commission's Inception Impact Assessment (IIA)<sup>99</sup> the analysis of the responses to the Commission-run public consultation on Distance marketing of consumer financial services<sup>100</sup>, a validation workshop covering the key findings of the study, as well as ad hoc contributions from stakeholders provided through other channels and consultation tools.

The aim of the consultation was to obtain qualitative and quantitative information from key stakeholders at national and EU level representing all groups concerned by the possible revision of the DMFSD.

### 2) Consultation activities and tools - types of stakeholders and data collection tools

The impact assessment relies extensively on the evidence findings of the **external supporting study** prepared by the contractor VVA/LE Europe (Study on the possible impacts of a proposal for revision of Directive 2002/65/EC concerning the distance marketing of consumer financial services) which fed into the analysis of the Commission. The study was carried out under close guidance of DG JUST.

The impact assessment also relies on the information and evidence gathered in the context of the **2019 Behavioural study** on the digitalisation of the marketing and distance selling of retail financial services<sup>101</sup> and the **REFIT evaluation** published in 2020<sup>102</sup>.

The consultation strategy was underpinned by a number of key activities using multiple tools to target a wide range of stakeholders through different channels and gather insights from as many relevant stakeholders as possible.

Stakeholder feedback was received on the **Inception Impact Assessment** between 28 May and 25 June 2021, following the Commission Proposal to review the DMFSD as part of the REFIT Annex of the Commission Work Programme 2020. A total of 14 contributions were received, analysed and taken into account. Overall, 9 contributions came from financial

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<sup>99</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13048-Distance-marketing-of-consumer-financial-services-review-of-EU-rules/feedback\\_en?p\\_id=24834005](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13048-Distance-marketing-of-consumer-financial-services-review-of-EU-rules/feedback_en?p_id=24834005).

<sup>100</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13048-Distance-marketing-of-consumer-financial-services-review-of-EU-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13048-Distance-marketing-of-consumer-financial-services-review-of-EU-rules/public-consultation_en).

<sup>101</sup> See [https://ec.europa.eu/info/sites/default/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/digitalisation\\_of\\_financial\\_services\\_-\\_main\\_report.pdf](https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf).

<sup>102</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2002-Distance-Marketing-of-Financial-Services-evaluation-of-EU-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2002-Distance-Marketing-of-Financial-Services-evaluation-of-EU-rules_en).



service providers and associations, 3 contributions came from consumer organisations, and 2 contributions came from others (1 trade union, 1 citizen).

The Commission also consulted its dedicated **Member State Expert Group** on the Implementation of the Consumer Credit Directive specifically to discuss the Review of the Distance Marketing of Financial Services Directive (June 2021).

The **stakeholder interviews**, organised by the contractor, aimed at gathering views from various key stakeholder groups. The interviews were performed from 29 July 2021 to 20 September 2021. Overall, 26 interviews with national authorities were performed, ranging from national regulatory authorities, consumer protection authorities and ombudsman. Furthermore, four contributions were collected from EU and national consumer associations. To gather the perception of the financial industry, three interviews with financial industry associations and two interviews with financial service providers were also conducted. The aim of the interviews was gathering information and views on the relevance of the DMFSD, potential gaps in the provisions, areas of improvements and qualitative data on the potential effects of a repeal (including costs and benefits). The findings, together with the results of other research activities, were used to develop preliminary policy options.

An **Open Public Consultation** was launched by the European Commission’s DG JUST between 22 June 2021 and 28 September 2021 and 45 stakeholders’ answers were received. The feedback received was analysed in order to gather additional evidence for the study regarding the relevance of the DMFSD, its application and enforcement. Overall, 6 consumer associations, 3 public authorities and 28 business associations and business contributed to the consultation. The rest of the participants comprised of academic/research institutions, NGOs and EU citizens.

A **follow-up online survey**, organised by the contractor, ran between 13 September 2021 and 3 October 2021. It targeted national authorities, consumer associations and financial service providers in all Member States. The survey focused on obtaining input on the expected impact of preliminary policy options and measures (including costs and benefits).

Lastly, a **validation workshop** was organised by the contractor on 20 October 2021. It offered participants a chance to discuss the various policy options, covering aspects such as their expected effectiveness and efficiency in addressing the problems identified and the impacts that they are likely to have on key stakeholders. 46 stakeholders participated.

*Table 11. Summary table on the numbers and type of activities*

| Stakeholder group                    | Consultation methods |        |     |     |          |
|--------------------------------------|----------------------|--------|-----|-----|----------|
|                                      | Interviews           | Survey | IIA | OPC | Workshop |
| Businesses and business associations | 5                    | 6      | 9   | 28  | 12       |

| Stakeholder group               | Consultation methods |           |           |           |           |
|---------------------------------|----------------------|-----------|-----------|-----------|-----------|
| National Regulatory Authorities | 26                   | 9         | -         | 3         | 31        |
| Consumer Associations           | 4                    | 3         | 3         | 6         | 3         |
| Academic institutions           | -                    | -         | -         | 1         | -         |
| Other <sup>103</sup>            | -                    | -         | 2         | 7         | -         |
| <b>Total</b>                    | <b>35</b>            | <b>18</b> | <b>14</b> | <b>45</b> | <b>46</b> |

**Other inputs** were received through bilateral meetings with stakeholders, specific ad-hoc reports and data from consumer associations, industry representatives and researchers.

The evidence collection for the Staff Working Document is also based on the Commission's experience in **monitoring and implementing** the Directive.

### 3) Evidence, Sources and quality

Thorough desk research and legal analysis were conducted.

The implementation of the stakeholder consultation encountered various challenges, some of which affected most consultation activities. The timing of the consultation also constituted an obstacle as it coincided with the summer period, when many stakeholders take their annual leave. Stakeholder fatigue may have also contributed to the low response rate. Most stakeholders had already started preparing their contribution for the Open Public Consultation argued they had no additional time nor views to share in such a short period of time.

Below is a summary of the key limitations affecting the quality of the evidence collected through some of the stakeholder consultation activities.

Stakeholder interviews: the number of interviews conducted with national authorities and ministries did not reach the target of 50 interviews initially planned. Several efforts were made to increase participation, including sending additional reminders, extending the deadline several times, using the European Commission's own communication channels, and giving an option to provide written feedback, with limited success.

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<sup>103</sup> NGOs, European citizens and unspecified.

Follow-up survey: the low response rate is the main limitation affecting the surveys despite the efforts to boost the response rate (such as extension of the deadline to submit responses, additional reminders via email and phone and contact with alternative stakeholders). Considering relatively small window of opportunity for stakeholders to provide feedback (three weeks), and the fact the survey was launched shortly after stakeholder interviews had been concluded, some stakeholders reported not having sufficient availability to participate in the survey. Some also argued that their stance was adequately captured during the interview stage.

Open Public Consultation: a high number of responses was received especially from business associations and financial service providers, which helped balance the views gathered via surveys and interviews. In addition, the public consultation also collected the views from additional stakeholder groups such as citizens, NGOs and academic and research institutions.

#### **4) Main stakeholder feedback per consultation activity**

##### *a. Inception Impact Assessment*

The input consisting of 14 contributions covered the assessment of the expected impacts of a potential EU action to revise the Distance Marketing of Financial Services Directive, including economic, social and impacts on simplification and administrative burden.

The outcome of this feedback illustrated that **financial service providers** prefer either the baseline scenario or the option to repeal the Directive. Those providers that opted to keep the baseline argued that deleting the Directive would deprive financial services from the benefits of the safety net feature.

**Consumer organisations** mostly favour a comprehensive revision of the DMFSD and mention the added value of the Directive represented by the safety net. They also point to ways of how to modernize the current text and build on it, for example taking into account the various digitalisation aspects that have come up since the adoption of the Directive.

##### *b. Member State Expert Group meeting*

In its dedicated Member State Expert Group on the Implementation of the Consumer Credit Directive specifically to discuss the Review of the Distance Marketing of Financial Services Directive (June 2021), the Commission presented in detail the state of play of the file, including the problems and options presented in the Inception Impact Assessment, before the tour de table on a set of questions took place.

The questions concerned: the added value and relevance for the DMFSD in light of product/horizontal legislation that occurred since its adoption, reference to concrete examples for the actual application of the DMFSD as a ‘safety net’, and the application/enforcement of the DMFSD.

The Member States gave several preliminary comments, from which a wide and rather varied picture emerged. A small number of Member States consider that the DMFSD only has theoretical value at the moment, and no longer has relevance. These Member States consider that its main features are included in sectoral legislation and there are overlaps,

while they consider sectoral legislation more robust. Some of these Member States held that even if the DMFSD were to be deleted, they would not amend, in the short-time, their national legislative framework. One Member State could agree to repeal the DMFSD, but called to ensure that the still valid parts are covered by product-specific legislation. This Member State cautioned that if repeal were to happen, the absorption of the protective framework of the DMFSD by other pieces of legislation is important so that there are no loopholes. A large number of Member States that took the floor were against a repeal because they thought it would leave a gap, and consider the DMFSD still relevant especially for the general framework and transparency it provides. The Member States against the repeal of the DMFSD argued that its provisions are used in investigation and enforcement actions and that repealing the safety net feature will lower the level of consumer protection.

### *c. Interviews*

*On pre-contractual information:* Despite some variation between financial sectors, most stakeholders indicated that the provisions on pre-contractual information are useful for providing consumers with a high level of protection. Further analysis shows that opinions differ between public authorities, consumer associations and the industry.

On average, **consumer associations** rated *Article 3 of the DMFSD* as **useful**, while **financial industry associations and financial service providers** consider the provisions mostly not useful considering **the average score**. Overall, **20 national authorities** and ministries provided input on how useful provisions on pre-contractual information are for consumer protection. Based on their input it appears that national authorities have different views on the relevance of this provision. Overlapping with national legislation and product-specific legislation was identified as the main driver behind the reduced relevance of Article 3. In contrast, some public authorities and ministries find the provisions on pre-contractual information of the DMFSD still useful to a certain degree. They mentioned three main reasons: the DMFSD acts as a “safety net”, the DMFSD is more stringent compared to other legislation, and the DMFSD bridges the gaps in consumer protection left by other directives.

In most cases participants believe **repealing** Article 3 of the DMFSD would **produce moderate to high costs**. For insurance products, payment accounts and personal pensions the potential costs according to half of participants would be high or very high. On the other hand, regarding consumer credits and mortgages, over 20% of participants suggested a repeal would not incur any costs for concerned parties.

Six **national authorities** out of 20 who replied, believe repealing the DMFSD would not create any costs for concerned stakeholders. Other public authorities believe that by repealing the DMFSD, financial service providers would be obliged to provide less pre-contractual information which would in turn result in lower benefits for service providers and high costs for consumers. Seven authorities believe costs of the repeal would be high for consumers purchasing services which are not covered by product-specific legislation. Six respondents indicated that Article 3 of the DMFSD is more stringent than other legislation which is why repealing it would create high costs for consumers.

All four **consumer associations** believe that repealing Article 3 of the DMFSD would create high costs for consumers in sectors not covered by other legislation. In this regard, they specifically referred to new emerging markets.

On the contrary, **business associations** and financial service providers indicated that repealing the DMFSD would result in low costs since product-specific legislation already addresses all the relevant issues.

*On the right of withdrawal:* Concerning the issue of sub-optimal use of right of withdrawal, interviewees had different opinions on the usefulness of article 6 to ensure an effective level of consumer protection. Indeed, the **stakeholders' opinion varied depending on the type of product**. For consumer credits and mortgages, around 40% of the interviewees mentioned that article 6 is mostly not useful, while around 25% of the stakeholders interviewed declared it is sometimes useful with only 15% mentioning that it is extremely useful. However, for other products, such as insurance products, other emerging services, personal pension products, article 6 seems to be still very useful. As an example, for insurance products, around 80% of the interviewees have rated this provision as useful, of which 35% have rated it as extremely useful and 55% as mostly useful.

**National authorities'** opinion on the usefulness of the DMFSD right of withdrawal also depended on the type of product. 6 national regulatory authorities stated that the DMFSD right to withdrawal is still extremely useful since, since 2002 the distance marketing of consumer financial services has changed in light of the digitalisation and the commercial practices used online by providers.

These 6 national regulatory authorities agree that the Directive, due to its horizontal application acts as a safety net for financial services and thus is useful for current products for which the legislation does not provide a right of withdrawal (e.g. insurance) and for future ones. Provisions on the right to withdrawal are regarded as necessary and should not be repealed, unless other legislation (i.e. directives) ensure an effective right of withdrawal in all cases currently falling within the scope of the DMFSD. As an example, in several countries payment related services, insurances, pensions and investments products are not covered by sector specific legislation.

Concerning **consumer associations**, there is a consensus on the extremely usefulness of the DMFSD in terms of right of withdrawal, especially for pensions, insurance products, investment products. 2 out of the 4 interviewed highlighted that consumers should be clearly informed about the procedure and provided the relevant withdrawal form before signing the contract. Granting a right of withdrawal and providing information to consumers on how to exercise it is very important for all financial services purchased online.

Concerning **financial service providers**, out of the 5 interviewed, 2 highlighted the extremely relevance of Article 6 of the DMFSD for home savings and cross-border sales. According to two of them, the most relevant aspect of such provision is the 14-days right to withdraw period.

When asked about the costs on consumer protection in case Article 6 were repealed, interviewees opinions differed greatly, again, depending on the product concerned. As an

example, for consumer credits, the majority of stakeholders highlighted the low/no costs for consumers: around 70% mentioned that in case Article 6 of the DMFSD were repealed, there will likely be no or very limited in terms of costs for consumer credits (including credit cards).

On the other hand, for insurance products, personal pension and other emerging services, around 50% of the stakeholders agreed that a possible elimination of Article 6 would create high/very high costs on consumer protections. Moderate costs were foreseen for payment accounts and mortgages.

On cross-border transactions: According to stakeholders, the main problems consumers face when purchasing financial services from different Member States mostly concern pre-contractual information, exercising the rights to withdrawal and starting a redress process.

#### *d. Open Public Consultation*

##### On the DMFSD as a safety net:

Digitalisation has led to new financial products emerging into the market at an increased pace and are increasingly offered online. Recent examples of new products not covered by product specific legislation include peer-to-peer lending, increased online offers of payday loans, and buy-now-pay-later schemes. In all these cases, the rights contained in the DMFSD are fully relevant (pre-contractual information and right of withdrawal), and the DMFSD should in principle act as a “safety net” for these new products, ensuring a uniform, high level of protection for consumers across the EU. As financial products are increasingly being sold online, and the number of physical bank branches is steadily decreasing, consumers should be duly protected whenever new products and technologies are launched into the market, which are not yet covered by product-specific legislation.

**Business associations** believe that the DMFSD provides a common ground for consumer protection when the sale of a service is not specifically regulated, usually for the pre contractual and contractual information, and for the right of withdrawal. This framework leaves room for innovation and is still valid. Business organisations also highlight the increasing familiarity with the use of the Internet as a result of the containment and lockdown measures adopted during the Covid-19 pandemic. They expect that specific provisions could eventually raise that level of protection in certain sectors, but it should be considered that the safety net of the Directive creates a level playing field for financial services, in a broad sense.

**Consumer organisations** support that the DMFSD “safety net” is useful for all types of retail financial services products sold online that are not yet covered by product-specific legislation as they are new and have been created afterwards.

**NGOs** mention that 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. 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. 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.

**Public authorities** have provided instances when they applied the DMFSD during investigations and enforcement actions (e.g. the need to provide pre-contractual information when diamonds are sold online).

*On pre-contractual information:*

**Business associations** believe that the provisions of the DMFSD on pre-contractual information are still relevant for savings accounts, consumer loans not covered by the consumer credit directive in its current form or for new products and mortgage credit. Also, the DMFSD provisions for telephone sales remain fully relevant given the absence of specific European legal provisions applicable to payment services, payment accounts, investment products and consumer credit. For those services covered by product-specific legislation, the DMFSD provides complementary protection. However, the large amount of pre-contractual information can contradict its actual purpose, namely, to provide the customer with a clear and transparent product description and thus a sound basis for decision-making. Deletion of the obsolete information requirements of the DMFSD and focus on essential details would be welcome. Business organisations also consider that the rules laid down by the DMFSD result outdated and obsolete as a result of more recent product specific legislation.

**Consumer organisations** argue that the right to pre-contractual information contained in the DMFSD will be even more important in the future as financial institutions and new players such as Fintechs and Bigtechs are increasingly offering products online, with physical bank branches closing at an increased pace in the face of the COVID-crisis and the overwhelming digitalisation of the financial services market. In order to ensure that the provisions on pre-contractual information are applied in practice, enforcement of the articles stemming from the Directive is crucial.

**NGOs** mention that the articles of the DMFSD may be applied in case of problematic products sold by distance (over the Internet or by phone). For example, this takes place in case of cross-selling when consumer credit products mortgages which are sold to consumer together with other products such as payment protection insurance.

**Public authorities** noted that most of the product-specific legislation already provide rules on pre-contractual information. However, this provision is important in case of a future emerging product for which no legislation is as yet applicable since providing pre-contractual information is a basic right.

*On the right of withdrawal:*

**Business associations** consider that the 14-day right to withdraw is one remaining aspect of the Directive which is still relevant and therefore must be retained. They are open also to amend the relevant sector-specific legislation to include the 14-day right. Overall, future legislation should be designed to be technology-neutral and future-proof.

**Consumer organisations** pointed out that financial service providers often exploit behavioural biases of consumers online, an environment where they are particularly vulnerable. In these situations, the right of withdrawal is extremely important in order to ensure that consumers are duly protected from unsuitable or overly expensive products, as well as hidden charges. Most complaints concerned the lack of consumer information of this right, the refusal by the provider to accept the withdrawal and bureaucratic difficulties faced by consumers while exercising their right. According to them, the DMFSD should therefore be revised to ensure that the procedure to exercise the right of withdrawal is simple and straightforward for consumers and consumers are duly informed about this procedure.

**Public authorities** noted that the right of withdrawal is still relevant in a number of important financial services, such as insurance.

*On unsolicited services and communications:*

**Business associations** consider that the issue of unsolicited services is sufficiently addressed by the provisions of the Unfair Commercial Practices Directive.

**Consumer organisations** also refer to the fact that the Unfair Commercial Practices Directive added a ban on inertia selling into Article 9 of the DMFSD. Regardless of how often the article on unsolicited services is applied or enforced, this article is not in itself sufficient to adequately protect consumers in the digital era. Consumer consent in the digital space can be obtained by default, for example via the use of pre-ticked boxes. The Consumer Rights Directive already prohibits the pre-ticking of boxes, but does not, for the moment, apply to financial services.

Regarding unsolicited communications, **public authorities** consider that the issue is sufficiently addressed in existing regulations and retaining the relevant provisions in the DMFSD would offer little value to consumers. The provisions of the GDPR relating to lawfulness of processing and consent are more comprehensive and stringent and therefore more effective in protecting persons from unsolicited communications than the DMFSD.

*On the relevance of the DMFSD and the application of horizontal and product-specific legislation:*

**Business associations** mention that since its creation, the Directive has put in place a safety net whose spirit and content allow adaptation to technological developments and thus ensure a high level of consumer protection. Today, the Directive creates legal uncertainty due to overlaps and/or duplications with provisions of more recent sector or products specific EU legislation such as the Insurance Distribution Directive (IDD) and the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs regulation) that have introduced new pre-contractual information or disclosure requirements that aim to strengthen the protection of the consumer. These EU texts (and also the GDPR and the e-privacy Directive) therefore diminish the intention and effect of the Directive. Overlapping legislation creates unnecessary regulatory burden which increases costs to the financial institutions and ultimately to the consumer.

**Consumer organisations** believe that new products are increasingly appearing on the online financial products market that are not yet subject to specific regulation. Thus it still is relevant and will continue to be relevant, irrespective of any other legislation.

**Public authorities** acknowledged that the relevance of the DMFSD has decreased over the years and that time is ripe to revise its legal clarity.

*On the repeal of the DMFSD:*

**Business associations** consider that there is currently too much duplication in the information that has to be provided to the consumer at pre-contract stage. Repealing parts of the Directive will remove duplication and additional work involved, as well as reduce costs. Product-specific directives are more effective in providing consumer protection because such requirements are suited to the product in question. They consider that the only provision that has not been superseded and retains value is the 14-day right of withdrawal. Companies additionally highlight that possible abolition of the DMFSD would risk to create fragmentation between actors due to different sectoral regulations and a risk of distortion of competition.

**Consumer organisations** highlight that the repeal of the directive would lead to a decrease in the level of consumer protection for financial services that are not or not fully covered by product-specific directives, as well as for all new types of financial products. The digitization of the distribution of financial services has increased significantly since the directive came into force and at the same time providers are reducing their physical representation and accessibility for consumers. This development shows how important it is to reduce existing information asymmetries between providers and consumers in order to protect consumers from hasty decisions (through pre-contractual information) and to enable them to revoke these decisions if necessary (through the right of withdrawal).

**Public authorities** consider that consumer protection would be badly affected, if DMFSD would be repealed. There is no product-specific legislation covering all kind of financial products and product-specific regulation will never be up to date as such products may appear in every moment. So they appreciate DMFSD as a safety net. Public authorities also noted that the DMFSD is still used for investigation and enforcement actions.

*e. Survey results*

*On the baseline scenario:* Concerning the current level of consumer protection regarding pre-contractual information, business associations and public authorities stakeholders consider that the level of protection offered by the DMFSD is very low or low since there is a large amount of overlap. Thus, the applicable law is not the DMFSD but the product-specific legislation. On the other hand, these same stakeholders and consumer organisations think that the current level of the protection regarding the right of withdrawal is high or very high.

*On repeal:* Concerning the effect on consumer protection regarding pre-contractual information if the DMFSD was to be repealed, all consumer organisations and a majority of public authorities and more than half of business associations anticipate that the effects would be very negative or negative, especially for the articles of the DMFSD which are still

relevant. With regard to the effect of repealing the provisions on the right of withdrawal without any subsequent legislative intervention replied all stakeholders, apart from a small number of financial services held that it would be very negative or negative. The same views by the same stakeholder replied that repealing the DMFSD would have very negative or negative effects to the safety net feature.

*On comprehensive revision:* Consumer organisations believe that introducing new comprehensive rules in the DMFSD while modernizing the current rights that would have positive or very positive effect. With regard to the right to pre-contractual information, according to the consumer organisations, new rules addressing how the information is to be presented would have a positive to very positive effect. Business associations and financial providers oppose a comprehensive revision since they believe it will bring disproportionate burdens and rated this option as very negative or negative. Public authorities had a nuanced view and held that what was important is that the DMFSD is not repealed.

*Repealing the DMFSD and merging with horizontal legislation:* Concerning the effect on consumer protection regarding pre-contractual information and the right of withdrawal if the DMFSD was to be merged with the horizontal legislation, the majority of public authorities anticipate that the effects would be very positive or positive. Around half of the consumer organisations also believe that this policy option is very positive or positive as long as the safety net is safeguarded. Business associations and financial providers had a nuanced position.

*On merging with vertical legislation:* Concerning the effect on consumer protection regarding pre-contractual information and the right of withdrawal if the DMFSD was to be merged with the vertical legislation, half of the stakeholders from each sector anticipate that the effects would be negative since the safety net would be lost. The other half anticipate that there would be no effect or the effect would be positive since the current overlap will be repealed. The rate of the effect, however, has been varying between the financial services as stakeholders believe that merging of the DMFSD with the vertical legislation s would be more positive for those financial services for which the DMFSD is still relevant.

*Comparing the options:* There does not seem to be a particular policy option that the different stakeholders seem to like most. While consumer organisations tend to prefer the comprehensive option, they could live with the option of repealing the DMFSD but inserting modernized provisions in the Consumer Rights Directive. On the other hand, business associations and financial providers do not support a comprehensive reform of the right of withdrawal which would include new provisions not yet found in the DMFSD. The majority of public authorities would support the modernization of the right to withdrawal.

#### *f. Validation Workshop*

The validation workshop started with an introduction of the study objectives, methodology and the presentation of the Policy Options. After the presentation of the study and the Policy Options, stakeholders were asked to participate in assessing the impacts of the Policy Options. The contractor launched the online survey and asked the participants to evaluate

each presented Policy Option in terms of its impact on costs (compliance and enforcement costs), consumer trust and welfare, and cross-border trade.

Key aspects that were discussed in the Q&A session were related to the usefulness of the DMFSD, the problems of the DMFSD and the preference of the Policy Options.

Concerning the usefulness of the DMFSD, EU-level consumer organisations have expressed that DMFSD is an important legislation as it works as a safety for the consumers regarding the products that are not covered by product-specific legislation.

As for the problems that are associated with the DMFSD, stakeholders seem to be in an agreement that the current DMFSD is not fully in line with the recent technological developments. Stakeholders, in general, agreed with the problems proposed by the study team. However, a consumer organisation mentioned that some additional problems (i.e. issues with personal data, regulation of the comparison websites, issues related robo-advice) could potentially be included in the Policy Options 2 (Comprehensive report). A public authority described the problem of overlapping between the DMFSD and other horizontal and product-specific legislation and explained that the DMFSD lacks legal clarity which then has triggered difficulties to companies, consumers and national regulatory authorities. Another public authority noted that it is often difficult to decide which legislation is applicable. Therefore, according to EU-level consumer organisations, introducing standardised forms of pre-contractual information and right of withdrawal would bring more certainty and it would improve the DMFSD. In terms of cross-border trade, a consumer organisation has mentioned that improvement of the DMFSD would increase the trust from the consumers when purchasing financial services online, hence, this would also result in higher facilitation of cross-border trade in online financial services in the EU.

Regarding the preference of the Policy Options, stakeholders had different opinions on which Policy Option would be the most appropriate. Stakeholders representing **consumer associations** noted that they would prefer Policy Option 2 (Comprehensive Reform) as the improvement of the DMFSD is necessary to ensure higher consumer protection. Stakeholders from some **national regulatory authorities** explained that they would prefer Option 3a as merging the DMFSD with horizontal legislation (the Consumer Rights Directive) would bring more legal clarity and coherence. Half of the stakeholders belonging to the financial services **industry** said that their associations would prefer Option 0 (Baseline), as current DMFSD operates efficiently as a safety net feature and any additional changes would bring extra costs to the businesses.

### ANNEX 3: WHO IS AFFECTED AND HOW?

#### 1) Practical implications of the initiative

Overall, **consumers** would be affected positively. Consumer trust would increase thanks to measures on how and when information should be presented, and on the reminder of the right to withdrawal. Additionally, the new Directive would ensure consumer empowerment by limiting practices exploiting behaviour patterns such as the use of default options. For the same reasons, the new provisions would have a positive effect on reducing consumer detriment (at least EUR 200-230 million) and on consumer trust. Moreover, a simplified and more coherent legal framework and more choice due to increased cross-border offer would also positively affect consumer trust and the reduction of consumer detriment.

**Business** will be impacted in terms of costs and adaptation of their infrastructure and personnel costs (at least round EUR 18 million). On the one hand, they would have to face most of the implementation costs of the new Directive. The new provisions would incur additional one-off and (limited) recurrent costs for businesses since the new measures would demand service providers to familiarise themselves with the improved Consumer Rights Directive, adapt their IT systems, train staff, update their websites and update contracts. Adopting new rules for presenting pre-contractual information, removing pre-ticked boxes and updating contracts would be done in the implementation phase. On the other hand, introducing more robust rules on the right to withdrawal could create more opportunities for consumers to submit complaints making slightly higher costs for processing those complaints. However, the repeal would reduce costs in terms of communications to consumers which are higher because certain providers seem to send information twice to comply both with the DMFSD and with sector specific legislation. Nevertheless, the proposal's simplified framework which ensures the safety net feature would result in a more level playing field for industry across borders. The revised rules within the Consumer Rights Directive would provide harmonised provisions across all financial services sectors when the product is bought at a distance: implementing simplified rules on pre-contractual information and right to withdrawal would mitigate the fragmentation caused by differences in national regulations.

**Public authorities** would also face some costs (at least around EUR 6 million). The introduction of new measures to modernise current DMFSD provisions together with new rules (such as the prohibition of default options and adaptation of presentational rules for different distribution channels) would introduce some one-off and recurrent costs for national authorities, which will have to transpose and implement them. Nonetheless, the burdens would be low since the new proposed changes are minimal.

#### 2) Summary of costs and benefits

The tables below present the preferred measure's costs and benefits identified and assessed in the Impact Assessment.



Table 12. Overview of Benefits – Preferred Option

| Description  | Amount               | Comments   |
|--|----------------------|--|
| <b>Direct benefits</b>                                   |                      |  |
| Reduced recurrent costs for communication with consumers | EUR 97,7 million (M) | Figures drawn from VVA supporting study estimates<br>Beneficiaries: financial services providers   |
| Clarification of the application of DMFSD                | EUR 42-48 M          | Figures drawn from VVA supporting study estimates<br>Beneficiaries: consumers  |
| Improve timing provision key info                        | EUR 39-45 M          | Figures drawn from VVA supporting study estimates<br>Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses). |
| Adapt information provision to channel                   | EUR 36-42 M          | Figures drawn from VVA supporting study estimates<br>Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses). |
| Prohibition default options                              | EUR 42,1-48,1 M      | Figures drawn from VVA supporting study estimates<br>Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses). |
| Cross-border trade: increase options for consumers       | EUR 36-48 M          | Figures drawn from VVA supporting study estimates<br>Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses). |
| <b>Indirect benefits</b>                                 |                      |  |
| Not available  |                      |  |

Table 13. Overview of costs – Preferred option

|   |                | Citizens/Consumers |           | Businesses |           | Administrations |           |
|---|----------------|--------------------|-----------|------------|-----------|-----------------|-----------|
|   |                | One-off            | Recurrent | One-off    | Recurrent | One-off         | Recurrent |
| Transposition/Adaptation                      | Direct costs   | -                  | -         | -          | -         | 0,8 M           | -         |
|   | Indirect costs | Not available      |           |            |           |                 |           |
| Public Authorities monitoring and enforcement | Direct costs   | -                  | -         | -          | -         | -               | 5,1 M     |
|   | Indirect costs | Not available      |           |            |           |                 |           |
| Familiarisation with new legislation          | Direct costs   | -                  | -         | 45,2 M     | -         | -               | -         |
|   | Indirect costs | Not available      |           |            |           |                 |           |
| Cost of updating/adapting IT systems          | Direct costs   | -                  | -         | 26,1 M     | -         | -               | -         |
|   | Indirect costs | Not available      |           |            |           |                 |           |

|                                    |                |               |        |        |   |   |
|------------------------------------|----------------|---------------|--------|--------|---|---|
|                                    |                |               |        |        |   |   |
| Updating contractual documentation | Direct costs   | -             | 30,1 M | -      | - | - |
|                                    | Indirect costs | Not available |        |        |   |   |
| Staff training                     | Direct costs   | -             | 2,0 M  | -      | - | - |
|                                    | Indirect costs | Not available |        |        |   |   |
| Complaint handling                 | Direct costs   | -             | -      | 13,7 M | - | - |
|                                    | Indirect costs | Not available |        |        |   |   |

### 3) Impact on Small & Medium Enterprises (SMEs)

The population of SMEs in the financial services differs from the composition of the European economy in other sectors. In the analysis conducted by the Support Study, SMEs account for nearly 70% of the overall composition of the business population ranging from 67% of credit institutions, 79% of pension funds and 76% of insurance companies. Micro companies are a small proportion, with only 10% of credit institutions having a turnover lower than 2 million euros and less than 10 employees, 52% of pension funds and 62% of insurance companies<sup>104</sup>.

According to the analysis conducted by the Support Study and the feedback received by consulted stakeholders, SMEs should not be impacted disproportionately in comparison to larger enterprises. The main types of impacts considered for this assessment would apply proportionately also to these businesses.

Regarding the compliance costs, in particular the cost of familiarisation with the new legislation and the consequential cost for the update of documentation and information systems, the overall costs for SMEs in the financial sectors, would account to 122 million euros for the initial one-off costs.

Recurring costs, such as staff training, are proportional to the number of employees. In 2020, approximately 250 thousand of the nearly 2 million employed in the sector, worked in SMEs. Consequently, the expenses for SMEs would be, proportionally, less burdensome for this category of businesses. According to our estimates, the overall cost would account for 4 Million euros in total for the period 2021-2031.

<sup>104</sup> For the purposes of this analysis, we have taken into account only enterprises with more than 1 employee and considered the NACE Rev. 2 classes: Credit institutions excluding central banking (K6419), Insurance (K651) and Pension funding (K653).

#### 4) One-in, one-out

The principle of the “one in, one out” approach consists of offsetting any burden for citizens and businesses resulting from the Commission’s proposal by removing an equivalent existing burden in the same policy area.

In the assessment, Policy Option 3(a) would entail a repeal of the DMFSD and integration of the measures aimed at ensuring consumer protection in an already existing directive with horizontal (cross-industry) application such as the Consumer Rights Directive. This approach, aimed at creating a simplified and cross-industry framework for consumers’ protection, would bring a net benefit to consumers without any expected additional cost for citizens: their rights would remain protected with no detriment to their condition and ensuring the role of “safety net” in case of emergence of new financial products or services.

In parallel, this simplification would also reduce costs for businesses in the financial services, one of the sectors with the highest level of regulation. The simplification would reduce the risk of inconsistencies with other legislative interventions – present or future – reducing the burden on businesses to ensure that the most recent and relevant norm applies and that mandatory communications with consumers is streamlined. A regulatory change would entail an initial one-off cost for business to adapt. These costs would mainly involve familiarisation activities (i.e. staff training on new regulatory framework) and update of commercial documentation to reflect the new framework. In the long term, however, the positive effect of a simplified regulatory framework should outweigh the initial burden

*Table 14. One-in, One-out table*

| <b>Net-in</b>  | <b>Amount (EURm)</b> | <b>Description</b>   |
|----------------|----------------------|--|
| Businesses     | 103                  | Update of non-labelling information (e.g. financial prospectus) and of IT systems, familiarisation with the information obligations and staff training |
| <b>Net-out</b> | <b>Amount (EURm)</b> | <b>Description</b>   |
| Businesses     | 98                   | Simplification of the regulatory framework   |
| Consumers      | 42                   | Clarification of regulatory framework  |

According to the estimates of costs and benefits under policy option 3(a), the regulatory intervention would very likely generate adaptation costs for businesses, in particular regarding the update of documentation, information material, IT systems and staff training. In most cases, these will be one-off costs that businesses would incur in the initial stage to

ensure compliance with the revised regulatory framework. In the mid-term the costs should be off-set by costs reduction for both businesses and consumers. In particular, the simplification and clarification of the regulatory framework should reduce the burden on businesses in terms of communication and information duties towards their customers. The clarification should also have a positive effect on consumers, in particular, leading to a reduced consumer detriment.

## ANNEX 4: ANALYTICAL METHODS

### 1) Partial quantification

The quantitative assessment was carried out for those impacts for which an assessment of costs and benefits could be made given the complexity of a measure and available data. This assessment was possible for three main sets of subjects: public administrations, financial service providers and consumers. These measures, however, do not cover the full amount of costs and benefits that would be generated by the different policy options but only the ones for which a reasonable monetary estimation was feasible.

The quantification, for the purposes of this impact assessment, was made for the following indicators:

*For Public Authorities:*

- One-off adaptation costs for public authorities (transposition and adaptation costs)
- Recurring enforcement and monitoring costs for public authorities.

*For Financial Service Providers:*

- One-off costs for financial service providers (including familiarisation costs, updating of IT systems, staff training, update of contractual documentation)
- Recurrent costs for financial service providers (in particular cost of handling complaints, rules on use of robo-advisors, comparison platforms).
- Recurrent benefits for financial service providers (specifically the reduction of the required communication to clients directly due to DMFSD).

*For consumers:*

- Reduction of consumers' detriment based on the assessment of the impact on consumers' detriment of the measures foreseen by the policy options.

These estimates do not consider the potential indirect effects of the measures e.g. lost revenue for financial service providers as a result of the measure, degree to which these costs would then be transferred to consumers, implication regarding competition amongst financial service providers and other wider structural effects on employment, GDP and environmental.

The estimates of the costs for the baseline scenario for the period 2022-2031 is consistent with the approach used in the DMFSD Evaluation Study published in 2020 which includes the detailed approach used for the calculation of these impacts in a dedicated annex.

### Calculation approach

For the purpose of better understanding the calculations, a summary table of the main costs and benefits and how they were estimated is provided below.

For each figure in the calculation of the overall net benefits of the policy options, assumptions have been made. The main assumption is that the net benefit generated by the DMFSD in 2018 (as calculated in the DMFSD evaluation study, 2020) will continue to be constant in case of no intervention. This was our baseline of comparison for all the potential

benefits brought by the individual measures since it was not possible to estimate which of the two main underlying forces driving the DMFSD net benefits would prevail: one of them is the decreasing relevance of the DMFSD due to future legislative interventions, the other is the increasing number of consumers that purchase financial services online.

A second general assumption is that the average costs to adapt to new provisions merged in other, already existing Directives, would be less costly than adapting to a completely revised DMFSD. For this reason, and considering that Options 3(a) and 3(b) would implement less measures than Option 2, these costs have been accounted only by half.

For the purpose of better understanding the calculations, a summary table of the main costs and benefits and how they were estimated is being provided.

*Table 15. Summary of the calculation methods for the monetisation of impacts*

| Impact   | Description   |
|--|---|
| <b>Cost for Public Authorities (PA)</b>          |   |
| One-off costs                                    | Transposition costs were calculated assuming a minimum number of days of work by the PA, at daily wages, for 27 Member States. Implementation costs are based on the estimate made in the DMFSD evaluation (2020), adapted at current prices, and multiplied by Member State. The difference between Option 3a and 3b is that, while the first foresees the transposition of the measures in one “horizontal” Directive, the second foresees the adaptation of multiple Directive and product specific legislation. However, this kind of cost, which would weight on the European institutions, has been considered as minimal thanks to internal procedures that would make these changes less burdensome.  |
| Recurrent costs                                  | Monitoring and Enforcement costs were calculated multiplying the number of days of work (as per DMFSD 2020 evaluation) at daily wage <sup>105</sup> and for 27 Member States. A net present value (NPV) at 4% discount rate was then calculated for the period 2022-2031. These recurrent costs include the monitoring and enforcement activities that are due to the additional provisions that are foreseen by the policy options.  |
| <b>Financial Service Providers<sup>106</sup></b> |   |
| One-off costs                                    | The one-off costs include familiarisation with the new provisions, the update of the IT systems and of internal documentation, and staff training.<br>Familiarisation costs follow the approach of the DMFSD evaluation (2020) and result from the multiplication of the full-time equivalent (FTE) that would be involved in the revision activities, by the daily wage in financial services and the overall number of enterprises in EU (wages and number of enterprises are taken from Eurostat).<br>Costs of update of the IT systems are assumed as the lower-bound estimate of the DMFSD evaluation and multiplied by the number of EU financial service providers with an average cost of 5.000 euros per company.<br>Staff training is assumed to be involving between 5% and 20% of the workforce considering that the revised measures would involve only the staff that is responsible for sales and that is in direct or indirect contact with customers. The training costs, however, have been accounted only for a fraction of the overall costs and in proportion to the relevance of the DMFSD as calculated in the evaluation study for the year 2018 (meaning that staff would not participate to a full day of training on the revised DMFSD or the updated regulatory framework, but that of that specific training, only a portion of it would be dedicated to these topics in in proportion to the estimated relevance of the DMFSD for consumer protection in financial services). |

<sup>105</sup> Source of data: Eurostat ( EARN\_GR\_NACE2 ) for Financial Services



*Table 15. Summary of the calculation methods for the monetisation of impacts*

|                    |   |
|--------------------|---|
| Recurrent costs    | Recurrent costs are all costs that financial service providers are expected to face on a yearly basis (from 2022 to 2031) to comply with the revised DMFSD. These costs include, for example, handling complaints, comply with rules on provision of robo-advice, etc.  |
| Recurrent benefits | A reduction of cost is accounted as an increased benefit for financial services. As mentioned by some stakeholders, financial service providers provide specific documentation and information in compliance with the DMFSD provisions. For this reason, a repeal or more in general a clarification of the application of the scope of the DMFSD, would likely remove these costs which would entail, mostly, the work of employees in preparing and setting up such communication (calculated as number of days of work at current cost).   |
| <b>Consumers</b>   |   |
| Consumer detriment | The consumer detriment estimated in the DMFSD evaluation study for 2018 has been extended for the 2022-2031 period considering a discount rate at 4%.   |
| Consumer benefits  | A consumer benefit is calculated as a reduction of consumer detriment brought by each measure considered in the Policy Options.<br>The DMFSD evaluation study calculates that the net benefits of the DMFSD in the period 2004-2018 were on average 3,7% annually <sup>107</sup> . To calculate consumer benefits, we estimated – based on stakeholders’ feedback - an expected increase of effectiveness brought by each policy measure and calculated it as the difference of the increased effectiveness in comparison to the baseline. For example, a measure that would strongly reduce problems for consumers regarding the right of withdrawal, is expected to increase the overall effectiveness and thus reduce by 50-80% the consumer detriment due to the ineffectiveness of the current DMFSD on this aspect. This gain is then calculated for the 2022-2031 period taking into account the expected increase in number of consumers performing online purchases of financial services. |

The next table presents the allocation of the impacts to the considered policy options. These impacts are allocated in consideration of the different regulatory provisions foreseen by the policy options.

*Table 16. Mapping of the costs and benefits for the assessment of the policy options*

|  | Policy Option 1 | Policy Option 2 | Policy Option 3a | Policy Option 3b |
|--|-----------------|-----------------|------------------|------------------|
| <b>Costs for Public Authorities</b>              |                 |                 |                  |                  |
| One-off cost: transposition/adaptation           |                 | ✓               | ✓                | ✓                |
| Recurrent cost: Monitoring                       |                 | ✓               | ✓                | ✓                |
| Recurrent cost: Enforcement                      |                 | ✓               | ✓                | ✓                |
| <b>Costs and benefits for Financial services</b> |                 |                 |                  |                  |
| Familiarisation with new legislation             | ✓               | ✓               | ✓                | ✓                |
| Cost of updating/adapting IT systems to          | ✓               | ✓               | ✓                | ✓                |

<sup>107</sup> i.e. the difference between the scenario with and without the DMFSD, the result is that the DMFSD generated a benefit 3,7% higher than the scenario without.

|   | Policy Option 1 | Policy Option 2 | Policy Option 3a | Policy Option 3b |
|---|-----------------|-----------------|------------------|------------------|
| pre-contractual information requirements                    |                 |                 |                  |                  |
| Updating contractual documentation                          | ✓               | ✓               | ✓                | ✓                |
| Staff training (on pre-contractual and right of withdrawal) |                 | ✓               | ✓                | ✓                |
| Recurrent costs of complaints handling                      |                 | ✓               | ✓                | ✓                |
| Measures on robo-advice                                     |                 | ✓               |                  |                  |
| Recurrent benefit of reduced communications with clients    | ✓               |                 | ✓                | ✓                |
| <b>Costs for Consumers</b>                                  |                 |                 |                  |                  |
| Consumer detriment (EURm)                                   | ✓               |                 |                  |                  |
| <b>Benefits for Consumers</b>                               |                 |                 |                  |                  |
| Clarification of the application of DMFSD                   | ✓               | ✓               | ✓                | ✓                |
| Roboadvice (when intermediary/when not)                     |                 | ✓               |                  |                  |
| Standardised information form                               |                 | ✓               |                  |                  |
| Improve timing provision key info                           |                 | ✓               | ✓                | ✓                |
| Specific withdrawal form                                    |                 | ✓               |                  |                  |
| Provision basic financial products                          |                 | ✓               |                  |                  |
| Adapt information provision to channel                      |                 |                 | ✓                | ✓                |
| Prohibition default options                                 |                 |                 | ✓                | ✓                |
| Cross-border trade  |                 | ✓               | ✓                | ✓                |

Both costs and benefits are accounted in comparison to the baseline (Option 0: Keep the DMFSD as it is). The estimates are coherent with the methodology adopted for the DMFSD evaluation study (2020) and builds on its results. To be noted that while the expected impact of the individual policy measures foreseen by the policy options are calculated in terms of reduced consumer detriment, these policy measures are also accounted in the one-off and recurring costs for financial service providers.

Based on the mapping of the different impacts for the stakeholders, the policy options can be compared based on their efficiency. Nevertheless, these estimates are only partial due to the lack of data on specific measures and on the effective size of the financial services in scope. In addition, the calculation cannot take into account, in monetary terms, of the value of “safety net” of having a horizontal legislation which covers current and future financial services. This limitation is, however, partially covered by the qualitative assessment.

The quantitative assessment assumes a range of increased effectiveness of the individual policy measures: a lower expected effectiveness determines the lower bound, while the higher expected effectiveness determines the higher one.

*Table 17. Ranges of increased effectiveness brought by individual policy measures*

|  | Policy Option | Effectiveness score |             | Assumed increased effectiveness measure |             |
|--|---------------|---------------------|-------------|---|-------------|
|  |               | <i>Low</i>          | <i>High</i> | <i>Low</i>                              | <i>High</i> |
| Clarification of the application of DMFSD          | 2, 3(a), 3(b) | ++                  | +++         | 40,0%                                   | 60,0%       |
| Roboadvice   | 2             | ++                  | +++         | 40,0%                                   | 60,0%       |
| Standardised information form                      | 2             | +++                 | ++++        | 60,0%                                   | 80,0%       |
| Improve timing provision key info                  | 2, 3(a), 3(b) | ++                  | ++          | 40,0%                                   | 50,0%       |
| Specific withdrawal form                           | 2             | +++                 | ++++        | 60,0%                                   | 80,0%       |
| Provision basic financial products                 | 2             | ++                  | +++         | 40,0%                                   | 60,0%       |
| Adapt information provision to channel             | 3(a), 3(b)    | +                   | ++          | 20,0%                                   | 40,0%       |
| Prohibition default options                        | 3(a), 3(b)    | ++                  | +++         | 40,0%                                   | 60,0%       |
| Cross-border trade: increased choice for consumers | 2, 3(a), 3(b) | ++                  | +++         | 40,0%                                   | 60,0%       |

According to the monetary estimates of the efficiency, the policy options perform as reported in the next table.

Table 18. Comparison of the efficiency of the policy options (EUR Million, NPV@4%, 2022-2031) – negative in parenthesis

|  | Policy Option 1 | Policy Option 2 | Policy Option 3a | Policy Option 3b |
|--|-----------------|-----------------|------------------|------------------|
| <b>Public Authorities</b>  |                 |                 |                  |                  |
| One-off cost: transposition/adaptation   | 0,0             | (1,6)           | (0,8)            | (0,8)            |
| Total one-off costs for PA   | 0,0             | (1,6)           | (0,8)            | (0,8)            |
| Recurrent cost: Monitoring   | 0,0             | (6,8)           | (3,4)            | (3,4)            |
| Recurrent cost: Enforcement  | 0,0             | (3,4)           | (1,7)            | (1,7)            |
| Total recurrent costs for PA   | 0,0             | (10,2)          | (5,1)            | (5,1)            |
| <b>Total costs for PA (EURm)(A)</b>  | <b>0,0</b>      | <b>(11,8)</b>   | <b>(5,9)</b>     | <b>(5,9)</b>     |
| <b>Financial Services</b>  |                 |                 |                  |                  |
| Familiarisation with new legislation   | (90,3)          | (90,3)          | (45,2)           | (45,2)           |
| Cost of updating/adapting IT systems to pre-contractual information requirements | 0,0             | (52,1)          | (26,1)           | (26,1)           |
| Updating contractual documentation   | 0,0             | (60,2)          | (30,1)           | (30,1)           |
| Staff training on pre- contractual information                                   | 0,0             | (2,0)           | (1,0)            | (1,0)            |
| Staff training on right of withdrawal  | 0,0             | (2,1)           | (1,0)            | (1,0)            |
| Total one-off costs for FS   | (90,3)          | (206,7)         | (103,4)          | (103,4)          |
| Recurrent cost: complaint handling (banking)                                     | 0,0             | (13,7)          | (6,8)            | (6,8)            |
| Recurrent cost: complaint handling (Insurance)                                   | 0,0             | (13,6)          | (6,8)            | (6,8)            |
| Measures on robo-advice  | 0,0             | (35,0)          | 0,0              | 0,0              |
| Total recurring costs for FS   | 0,0             | 62,3            | 13,7             | 13,7             |
| <b>Total costs for FS (EURm)</b>   | <b>(90,3)</b>   | <b>(269,0)</b>  | <b>(117,0)</b>   | <b>(117,0)</b>   |
| Reduced communication  | 97,7            | 0,0             | 97,7             | 97,7             |
| <b>Total benefits for FS (EURm)</b>  | <b>97,7</b>     | <b>0,0</b>      | <b>97,7</b>      | <b>97,7</b>      |
| <b>Net costs for FS (EURm) (B)</b>   | <b>7,4</b>      | <b>(269,0)</b>  | <b>(19,3)</b>    | <b>(19,3)</b>    |
| <b>Consumers</b>   |                 |                 |                  |                  |
| <b>Consumer detriment (EURm) (C)</b>   | <b>(560)</b>    |                 |                  |                  |

|  | Policy Option 1 | Policy Option 2 | Policy Option 3a | Policy Option 3b |
|--|-----------------|-----------------|------------------|------------------|
| <b>Impact of measures (lower bound)</b>            |                 |                 |                  |                  |
| Clarification of the application of DMFSD          | 42              | 21              | 42               | 38               |
| Roboadvice (when intermediary/when not)            | 0               | 20              | 0                | 0                |
| Standardised information form                      | 0               | 48              | 0                | 0                |
| Improve timing provision key info                  | 0               | 39              | 39               | 35               |
| Specific withdrawal form                           | 0               | 48              | 0                | 0                |
| Provision basic financial products                 | 0               | 42              | 0                | 0                |
| Adapt information provision to channel             | 0               | 0               | 36               | 32               |
| Prohibition default options                        | 0               | 0               | 42               | 38               |
| Cross-border trade: increase options for consumers | 0               | 36              | 36               | 32               |
| <b>Total consumer benefits (lower bound) (D)</b>   | <b>42</b>       | <b>255</b>      | <b>195</b>       | <b>176</b>       |
| <b>Total estimates (lower bound) (A+B+C+D)</b>     | <b>510</b>      | <b>26</b>       | <b>170</b>       | <b>151</b>       |
| <b>Impact of measures (higher bound)</b>           |                 |                 |                  |                  |
| Clarification of the application of DMFSD          | 48              | 24              | 48               | 43               |
| Roboadvice (when intermediary/when not)            | 0               | 23              | 0                | 0                |
| Standardised information form                      | 0               | 54              | 0                | 0                |
| Improve timing provision key info                  | 0               | 45              | 45               | 41               |
| Specific withdrawal form                           | 0               | 54              | 0                | 0                |
| Provision basic financial products                 | 0               | 48              | 0                | 0                |
| Adapt information provision to channel             | 0               | 0               | 42               | 38               |
| Prohibition default options                        | 0               | 0               | 48               | 43               |
| Cross-border trade: increase options for consumers | 0               | 48              | 48               | 43               |
| <b>Total consumer benefits (higher bound) (E)</b>  | <b>48</b>       | <b>297</b>      | <b>231</b>       | <b>208</b>       |
| <b>Total estimates (higher bound) (A+B+C+E)</b>    | <b>(504)</b>    | <b>16</b>       | <b>206 €</b>     | <b>183 €</b>     |

Each policy option would generate costs and benefits for the different categories of stakeholders. In particular:

- **Policy Option 1: Repeal of the DMFSD** – this policy option would generate a total cost estimated above 500 Million euros in consumer detriment as a result of the loss of the expected benefits of the DMFSD (baseline). These costs, however, could be reduced in case of effective self-regulation of the industry (not monetised) or increase in case of national law to reduce consumer protection due to the absence of the DMFSD at EU level.
- **Policy Option 2: Improve the DMFSD based on identified issues (Comprehensive revision)** – this policy option, according to our calculations, would generate a positive net benefit in the period 2022-2031. This policy option foresees an increased burden for financial services providers which should be compensated by the increase of consumer protection. This small positive net benefit calculated in our estimates, however, could easily also be a negative net cost in case of slightly higher costs for businesses or lower benefits for consumers.
- **Policy Options 3(a) and 3(b): Repeal, modernisation of relevant provisions introduced in horizontal legislation** – these policy options are the most balanced in terms of efficiency amongst the ones taken into consideration. According to the monetised impacts, these options would generate a moderate level of costs for public authorities and financial services while bringing a relatively high reduction of consumer detriment generating a positive net benefit in the period taken into account. Of the two options, however, the benefits for policy option 3(b) have been accounted not fully (at 90% of their value) to take into account of the absence of the “safety net” feature of the DMFSD or that a horizontal consumer protection legislation would bring.

The quantitative assessment is complemented by a qualitative assessment of the policy options resulting from the consultation with several stakeholders directly consulted on the specific policy options during the validation workshop and taking into account the quantitative assessment. The qualitative consultation allows for a stronger differentiation of the analysed policy options.



## 2) Description of the analytical methods

This annex provides a description of the approach to estimate the impacts on consumers, financial providers and public authorities of the proposed policy options attributable to the DMFSD in a 10 year timeframe (2022-2031). These approaches are consistent and build on the assessments made for the evaluation study of the DMFSD published in 2020.

The methodology follows the Better Regulation Guidelines and the accompanying Toolbox (such as Tool #32 Consumers; Tool #58 Typology of costs and benefits; Tool #59 Methods to assess costs and benefits; Tool #60 The standard cost model for estimating administrative costs)<sup>108</sup>.

*Table 19. Market evolution*

Market evolution is based on Eurostat data<sup>109</sup> on the percentage of the population aged between 16 and 74 that has purchased at least one financial service over the internet for the period 2016-2019 and on the percentage of population aged between 16 and 74 that has carried out at least one of the financial activities over the internet.

Data have then been estimated for the period 2022-2031 based on a linear regression.

|                              | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 |
|------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| <b>Online purchase of FS</b> | 6%   | 6%   | 7%   | 7%   | 7%   | 8%   | 8%   | 8%   | 8%   | 9%   | 9%   |
| <b>Financial Activities</b>  | 18%  | 20%  | 22%  | 23%  | 25%  | 27%  | 28%  | 30%  | 32%  | 34%  | 35%  |

According to these estimates, the number of individuals that purchase financial services online, should increase (assuming the same trend of the last 10 years) to 27 million users by 2031.

The impacts that have been taken into account for both the qualitative and quantitative efficiency assessment are the following:

*For Public Authorities:*

- One-off adaptation costs for the adaptation and redress activities
- Recurring enforcement and monitoring costs

*For Financial Service Providers:*

- One-off costs including familiarisation costs, updating of IT systems, staff training, update of contractual documentation, adaptation of complaint mechanisms
- Recurrent costs including compliance with measures on pre-contractual information requirements, right of withdrawal, rules on use of robo-advisors, comparison platforms

<sup>108</sup> European Commission (2015). Better Regulation Guidelines.

<sup>109</sup> Eurostat, Internet purchases by individuals (until 2019) and Financial activities over the internet (until 2019).

For consumers:

- Reduction of consumers' detriment
- Impacts of the measures foreseen in the policy options

These impacts have been assessed mainly in a qualitative manner, and where possible, complemented with the quantitative assessment. All these impacts can both be considered as *benefits* or *costs* depending on the sign of the impact: a negative impact increases costs while a positive impact can be considered a benefit causing a reduction of costs in comparison to the baseline.

### Estimates of impacts for public authorities

The impact on public authorities was calculated for the following areas:

- One-off implementation/adaptation costs
- Monitoring activities
- Enforcement activities

The table below describes the methodology and the assumptions adopted in accordance with the ones adopted for the DMFSD evaluation (2020). The costs are calculated at 2020 prices and, for recurrent costs, at net present value (4%) for the period 2022-2031.

Table 20.

|                            | Methodology  | Assumptions  |
|----------------------------|--|--|
| Transposition costs        | <p>Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public sector</p> <p>Total cost = Unit cost x 27 Member States</p> | <ul style="list-style-type: none"> <li>• 3 officials per Member state for 10 days per month for 12 months</li> <li>• Average daily wage for the public sector per country<sup>110</sup> (from Eurostat)</li> </ul> |
| Recurrent cost: Monitoring | <p>Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public sector</p> <p>Total cost = Unit cost x 27</p>               | <ul style="list-style-type: none"> <li>• 4 officials per Member State for 4 days per month</li> <li>• Average daily wage for the public sector<sup>111</sup> (from</li> </ul>                                      |

<sup>110</sup> Labour cost levels by NACE Rev. 2 activity (online data code: LC\_LCI\_LEV )

<sup>111</sup> Ibid.

| Member States  | Eurostat)   |
|--|---|
| <p>Recurrent cost: Enforcement Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public sector</p> <p>Total cost = Unit cost x 27 Member States</p> | <ul style="list-style-type: none"> <li>• 4 officials per Member State for 2 days per month</li> <li>• Average daily wage for the public sector<sup>112</sup> (from Eurostat)</li> </ul> |

### Estimates of impacts on financial service providers

The impact on financial service providers was calculated for the following areas:

One-off costs:

- Familiarisation with the Directive
- Cost of updating/adapting IT systems
- Staff training on pre- contractual information
- Staff training on right of withdrawal
- Updating contractual documentation

The table below describes the methodology and the assumptions adopted in accordance with the ones adopted for the DMFSD evaluation (2020). The costs are calculated at 2020 prices and, for recurrent costs, at net present value (4%) for the period 2022-2031.

| Table 21                           | Methodology   | Assumptions  |
|------------------------------------|---|--|
| Familiarisation with the Directive | <p>Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the financial sector</p> <p>Total cost = Unit cost x number of financial institutions</p> | <ul style="list-style-type: none"> <li>• 2 staff members per financial institution for 15 days per staff member</li> <li>• Average daily wage for the financial sector<sup>113</sup> (from Eurostat)</li> <li>• Number of</li> </ul> |

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

| Table 21                                      | Methodology  | Assumptions  |
|---|--|--|
|   |  | financial institutions <sup>114</sup> (from Eurostat)  |
| Cost of updating/adapting IT systems          | Unit cost = Average cost of updating/adapting the IT system<br>Total cost = Unit cost x number of financial institutions   | <ul style="list-style-type: none"> <li>• Eur 5,000 per institution</li> <li>• Number of financial institutions<sup>115</sup> (from Eurostat)</li> </ul>  |
| Staff training on pre-contractual information | Unit cost = No. of people involved x No. of days per person x Average daily wage in the financial sector<br>Total cost = Unit cost x number of financial institutions x share of financial institutions that needed to adapt to this requirement | <ul style="list-style-type: none"> <li>• Communication/training takes 1 day</li> <li>• All front office employees (assumed to be 20% of workforce undergo training)</li> <li>• Average daily wage for the financial sector (from Eurostat)</li> <li>• Number of financial institutions (from Eurostat)</li> <li>• Values for attribution and compliance</li> </ul> |
| Staff training on right of withdrawal         | Unit cost = No. of people involved x No. of days per person x Average daily wage in the financial sector<br>Total cost = Unit cost x number of financial institutions x share of financial institutions that needed to adapt to this requirement | <ul style="list-style-type: none"> <li>• Communication/training takes 1 day</li> <li>• All front office employees (assumed to be 20% of workforce undergo training)</li> <li>• Average daily wage for the financial sector (from Eurostat)</li> <li>• Number of financial</li> </ul>   |

<sup>114</sup> Annual detailed enterprise statistics for services (NACE Rev. 2 H-N and S95) [sbs\_na\_1a\_se\_r2]

<sup>115</sup> Ibid.

| <i>Table 21</i>                    | <b>Methodology</b>  | <b>Assumptions</b>  |
|------------------------------------|---|---|
|                                    |   | institutions (from Eurostat) <ul style="list-style-type: none"> <li>• Values for attribution and compliance</li> </ul>  |
| Updating contractual documentation | Unit cost = No. of people involved x No. of days per person x Average daily wage for the financial sector<br>Total costs = Unit cost x number of financial institutions | <ul style="list-style-type: none"> <li>• 2 members of legal team</li> <li>• 10 days per team member</li> <li>• Average daily wage for the financial sector (from Eurostat)</li> <li>• Number of financial institutions (from Eurostat)</li> </ul> |
| Reduced communication              | Unit cost = No. of people involve x No. of days per person x Average daily wage for the financial sector  | <ul style="list-style-type: none"> <li>• 2 members</li> <li>• 2 days per team member</li> <li>• Average daily wage for the financial sector (from Eurostat)</li> <li>• Number of financial institutions (from Eurostat)</li> </ul>                |

Recurring costs for financial providers are related to the need to comply with the DMFSD and depend on their level of compliance with the Directive and their need to adjust their operations. The approach taken to calculate these costs is based on the estimates made for the DMFSD evaluation study, updated to 2020 prices. The overall costs are calculated at net present value (at a 4% discount rate) for the period 2022 – 2031.

To the recurring costs, two measures were also taken into account:

- Introduction of rules on robo-advice: which foresee that there is human intervention if requested by the consumer; consumer not to be exploited due to their relative lack of knowledge about financial products and their dependence on the product providers; ensure that robo-advice provides advice that meets best the demands of the consumer in an honest and transparent manner
- Introduction of independent comparison websites and extended to all financial services.

Regarding the comparison websites, the impact assessment study of the Payment Accounts Directive<sup>116</sup> mentioned that, for those services in which data are already collected, the costs for the implementation of comparison websites is negligible.

Regarding the estimation of cost of the rules on robo-advice, based on the figures provided by a 2020 study,<sup>117</sup> the overall number of users in Europe of these services amount to 10,5 million. It is possible to estimate that, at a 4% problem rate (as calculated for investment activities for 2018 in the evaluation report) for which the intervention of a ‘human’ operator is required, the net present value of such provision for the period 2022-2031 would be around 35 million euros.

Benefits are calculated in terms of reduced communication with clients due to DMFSD directly since some stakeholders mentioned they have specific communication with customers based on information related to the DMFSD in duplication with the communication due to the product specific regulation. In general, it is assumed that communication with clients would be amended and that adaptation of this with DMFSD would be removed with the repeal of the Directive (which would occur for the policy options 1, 3(a) and 3(b) only).

### **Estimates of impacts on consumers**

The main purpose of the DMFSD is to ensure a better protection of the EU consumers in distance marketing which in turn leads to a lower consumer detriment (possible due to a lower incidence rate of problems and a lower magnitude) and to an increase in demand for financial services;

Our research conducted as part of the DMFSD Evaluation (2020) showed that the DMFSD had an impact on increasing consumer protection with net benefits ranging between 69 and 427 million euros (at 2018 prices). On the other hand, the evaluation did not find hard evidence that changes in the demand or supply of consumer credit products can be directly attributed to DMFSD (including cross-border activities). Consequently, the same assumption is used as part of this study, and we will quantify the impact of the DMFSD on the reduction of consumer personal detriment only, while the cross-border effect is estimated in terms of overall potential percentage increase, but not in monetary terms.

### **Reduction of personal detriment**

Personal detriment refers to loss of welfare experienced by individuals due to problems that occur after the purchase and that were not expected (based on reasonable expectations). Personal detriment includes financial and non-financial losses (e.g. time losses, psychological detriment).

The DMFSD Evaluation (2020) found that due to various factors, consumer detriment was reduced in most of the EU 28 Member States since 2004. The attribution of such effect to the

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<sup>116</sup> Study on EU payment accounts market, 2021. Available at: <https://op.europa.eu/en/publication-detail/-/publication/0854f727-6117-11eb-8146-01aa75ed71a1/language-en>.

<sup>117</sup> Better Finance (2020).



DMFSD, however, declined through the years due to the decreasing relevance of the Directive thanks to products specific and more recent horizontal legislation.

As of 2018, the calculated attribution to the DMFSD in the evaluation study is reported in the table below.

*Table 22. Attribution rates as of 2018 according to DMFSD evaluation (2020)*

|                  | Attribution on pre-contractual information | Rights of withdrawal | Unsolicited communication and services |
|------------------|--|----------------------|--|
| Banking products | 2.6%                                       | 3.9%                 | 0.0%                                   |
| Mortgage         | 0.0%                                       | 1.1%                 | 0.0%                                   |
| Credit / loans   | 0.7%                                       | 1.0%                 | 0.0%                                   |
| Insurance        | 1.7%                                       | 2.5%                 | 0.0%                                   |
| Pensions         | 6.5%                                       | 4.1%                 | 0.0%                                   |
| Payment services | 0.0%                                       | 0.0%                 | 0.0%                                   |
| Investments      | 0.7%                                       | 0.3%                 | 0.0%                                   |

As of 2018 the DMFSD was mainly having a relevance for consumers in the banking products and in the pensions sectors. However, with the introduction of the PEPP Regulation (PEPP) in 2022 it may be expected that the DMFSD's relevance might decrease. Other legislations in financial services, such as the Proposal to amend the Consumer Credit Directive of 2021 might further decrease the relevance of the DMFSD.

The DMFSD evaluation study measures the overall net benefit of a scenario with the DMFSD to be 3,7% higher (for 2018) in comparison to a scenario without the DMFSD. Thus, it is possible to estimate the baseline effectiveness of the DMFSD, with the assumption that such effectiveness would not decrease without changes in the Directive, for the period 2022-2031. At a discount rate of 4%, the overall net benefit of the DMFSD would account to 560 Million euros.

### **Assessment of the increased effectiveness of the policy measures**

The fundamental assumption adopted to estimate the monetary impact of the proposed measures, is that an increase effectiveness would also bring a reduction of the consumer detriment.

Based on qualitative data collected through interviews, open public consultation, survey and the validation workshop, for each measure a potential percentage increase of the effectiveness of the policy options has been assigned. The increase effectiveness is then estimated in proportion to the overall impacted population (as estimated by the DMFSD Evaluation, 2020).

The difference between the NPV of the gained efficiency and the baseline allows for a rough estimate of the monetary net benefit of the measures. The table below summarise this

assessment in the assumption of a lower effectiveness score (lower bound) and a higher effectiveness score (higher bound):

Table 23. Estimate of impact on consumer benefit of proposed policy options (lower and higher bound)

| LOWER BOUND                               | Effectiveness score | Assumed increased effectiveness measure | Overall increase of Consumer protection | Impacted population | Annual decrease consumer detriment | NPV(4%)  | Baseline (NPV 4%) | Net benefit (EUR m) |
|---|---------------------|---|---|---------------------|------------------------------------|----------|-------------------|---------------------|
| Clarification of the application of DMFSD | ++                  | 40.0%                                   | 5.2%                                    | 21,788,452          | 104.69 €                           | 849.11 € | 807 €             | 42 €                |
| Roboadvice                                | ++                  | 40.0%                                   | 5.2%                                    | 10,500,000          | 102.00 €                           | 827.31 € | 807 €             | 20 €                |
| Standardised information form             | +++                 | 60.0%                                   | 6.0%                                    | 21,788,452          | 105.43 €                           | 855.13 € | 807 €             | 48 €                |
| Improve timing provision key info         | ++                  | 40.0%                                   | 5.2%                                    | 21,788,452          | 104.69 €                           | 849.11 € | 807 €             | 42 €                |
| Specific withdrawal form                  | +++                 | 60.0%                                   | 6.0%                                    | 21,788,452          | 105.43 €                           | 855.13 € | 807 €             | 48 €                |
| Provision basic financial products        | ++                  | 40.0%                                   | 5.2%                                    | 21,788,452          | 104.69 €                           | 849.11 € | 807 €             | 42 €                |
| Adapt information provision to channel    | +                   | 20.0%                                   | 4.5%                                    | 21,788,452          | 103.95 €                           | 843.10 € | 807 €             | 36 €                |
| Prohibition default options               | ++                  | 40.0%                                   | 5.2%                                    | 21,788,452          | 104.69 €                           | 849.11 € | 807 €             | 42 €                |
| Cross-border trade                        | ++                  | 40.0%                                   | 5.2%                                    | 21,788,452          | 104.69 €                           | 849.11 € | 807 €             | 42 €                |

| HIGER BOUND | Effectiveness score | Assumed increased effectiveness measure | Overall increase of Consumer protection | Impacted population | Annual decrease consumer detriment | NPV(4%) | Baseline (NPV 4%) | Net benefit (EUR m) |
|-------------|---------------------|---|---|---------------------|------------------------------------|---------|-------------------|---------------------|
|-------------|---------------------|---|---|---------------------|------------------------------------|---------|-------------------|---------------------|

|   |      |       |      |            |          |          |       |      |
|---|------|-------|------|------------|----------|----------|-------|------|
| Clarification of the application of DMFSD | +++  | 60.0% | 6.0% | 21,788,452 | 105.43 € | 855.13 € | 807 € | 48 € |
| Roboadvice                                | +++  | 60.0% | 6.0% | 10,500,000 | 102.36 € | 830.21 € | 807 € | 23 € |
| Standardised information form             | ++++ | 80.0% | 6.7% | 21,788,452 | 106.17 € | 861.14 € | 807 € | 54 € |
| Improve timing provision key info         | ++   | 50.0% | 5.6% | 21,788,452 | 105.06 € | 852.12 € | 807 € | 45 € |
| Specific withdrawal form                  | ++++ | 80.0% | 6.7% | 21,788,452 | 106.17 € | 861.14 € | 807 € | 54 € |
| Provision basic financial products        | +++  | 60.0% | 6.0% | 21,788,452 | 105.43 € | 855.13 € | 807 € | 48 € |
| Adapt information provision to channel    | ++   | 40.0% | 5.2% | 21,788,452 | 104.69 € | 849.11 € | 807 € | 42 € |
| Prohibition default options               | +++  | 60.0% | 6.0% | 21,788,452 | 105.43 € | 855.13 € | 807 € | 48 € |
| Cross-border trade                        | +++  | 60.0% | 6.0% | 21,788,452 | 105.43 € | 855.13 € | 807 € | 48 € |

The net benefit attributed to these measures is then used to estimate the overall impact of the analysed policy options under these two scenarios.

## ANNEX 5. PROBLEM TREE

### Drivers

#### Driver 1: Lack of legal clarity:

- (a) **Over-lap with specific horizontal** (need to define the lex specialis/lex generalis relationship);
- (b) **some definitions or terms in the Directive are too vague**

**Driver 2: Developments in consumer behavior**, often exploited by providers, **making regulatory framework inadequate** (e.g. pre-ticked boxes)

**Driver 3: Emergence of new distribution channels and financial services due to increased digitalisation** (e.g. fax machine no longer preferred channel)

### Problems

**Problem 1: Lack of coherence and decreased relevance of the DMFSD due to overlap with product-specific and horizontal legislation**

**Problem 2: Consumers taking out financial services by means of distance communication are not sufficiently protected and face detriment**

Sub-problem 2.1: Limited consumer awareness of key elements and costs of some financial services (e.g. pre-contractual information is not presented in a clear way))

Sub-problem 2.2: sub-optimal use of the right of withdrawal

Sub-problem 2.3: New market practices exploiting patterns in consumer behavior (pre-ticked boxes)

**Problem 3: The competitiveness of the internal market for financial services sold by means of distance communication is not fully achieved due to barriers to the provision of financial services across borders**

### Consequences

Consumers who suffer detriment have less trust in the market

Consumers (without detriment) do not take financial products because they have limited trust (loss of welfare)

Unfair competition as not all suppliers play by the same rules

Not realized potential of the internal market (loss of welfare)

Unnecessary compliance costs for businesses

## ANNEX 6 INTERACTION OF DMFSD WITH EXISTING LEGISLATION AND ON-GOING INITIATIVES

(i) Since DMFSD was enacted in 2002, the EU legislators have adopted several product-specific and horizontal legislations that have directly or indirectly impacted the relevance of DMFSD. The following table presents the main legislations and ongoing initiatives which interact with the scope of application of the DMFSD.

Table 24. Interaction with existing legislation and upcoming initiatives

|   | Year of implementation | Consumer credit | Mortgages | Insurance products | Payment accounts | Investment products | Payment services | Personal pension products | Other Financial Products |
|---|------------------------|-----------------|-----------|--------------------|------------------|---------------------|------------------|---------------------------|--------------------------|
| <b>Product-specific legislation</b>   |                        |                 |           |                    |                  |                     |                  |                           |                          |
| Consumer Credit Directive (CCD, 2008/48/EC)   | 2010                   | ✓               |           |                    |                  |                     |                  |                           |                          |
| Mortgage Credit Directive (MCD, 2014/17/EU)   | 2016                   |                 | ✓         |                    |                  |                     |                  |                           |                          |
| Payment Accounts Directive (PAD, 2014/92/EU)  | 2016                   |                 |           |                    | ✓                |                     |                  |                           |                          |
| Payment Services Directive (PSD II, 2015/2366)  | 2018                   |                 |           |                    | ✓                |                     | ✓                |                           |                          |
| Solvency II Directive (Solvency II, 2009/138/EC)  | 2016                   |                 |           | ✓                  |                  |                     |                  |                           |                          |
| Insurance Distribution Directive (IDD, 2016/97)   | 2018                   |                 |           | ✓                  |                  |                     |                  |                           |                          |
| Market in Financial Instruments Directive (MiFID, 2014/65/EU)                                       | 2017                   |                 |           |                    |                  | ✓                   |                  |                           |                          |
| Undertakings for the collective investment in transferable securities Directive (UCITS, 2009/65/EC) | 2011                   |                 |           |                    |                  | ✓                   |                  |                           |                          |
| Prospectus Regulation (2017/1129)   | 2019                   |                 |           |                    |                  | ✓                   |                  |                           |                          |
| Alternative investment fund managers Directive (AIFMD, 2011/61/EU)                                  | 2013                   |                 |           |                    |                  | ✓                   |                  |                           |                          |
| EU Regulation 1286/2014 on packaged retail and insurance-based investment products (PRIIPs)         | 2018                   |                 |           | ✓                  |                  | ✓                   |                  |                           |                          |

|   |      |   |   |   |   |   |   |   |   |   |
|---|------|---|---|---|---|---|---|---|---|---|
| Directive on deposit guarantee schemes (2014/49/EU)           | 2016 |   | ✓ |   |   |   |   |   |   |   |
| Pan-European personal pension product (PEPP)                  | 2020 |   |   |   |   |   |   |   | ✓ |   |
| Crowdfunding Regulation (2020/1503)                           | 2020 |   |   |   |   |   |   |   |   | ✓ |
| <b>Horizontal legislation</b>                                 |      |   |   |   |   |   |   |   |   |   |
| e-commerce Directive (ECD)                                    | 2002 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| ePrivacy Directive (EPD)                                      | 2003 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Unfair Commercial Practices Directive (UCPD)                  | 2007 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Consumer Rights Directive                                     | 2014 |   |   |   |   |   |   |   |   |   |
| General Data Protection Regulation (GDPR)                     | 2018 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Geo-blocking Regulation                                       | 2018 |   |   |   |   |   |   |   |   |   |
| <b>Ongoing Negotiations of Product Specific Legislation</b>   |      |   |   |   |   |   |   |   |   |   |
| Proposal to Revise the Consumer Credit Directive (CCD,)       | 2021 | ✓ |   |   |   |   |   |   |   |   |
| Proposal for a Regulation on Markets in Crypto-assets (MICA,) | 2021 |   |   |   |   |   |   |   |   | ✓ |
| Revision of Solvency II                                       | 2021 |   |   |   | ✓ |   |   |   |   |   |

(ii) Interaction and interplay between the rights laid down in the DMFSD and product-specific legislation: an example for one of the financial services sector (insurance)

To complement the example set out in the box in [Section 1.2](#) concerning the interaction between the DMFSD and product-specific legislation, which concerned the consumer loan sector, the following example, from the insurance sector, may serve as a model to explain the interaction with regard to the right of pre-contractual information and the right of withdrawal.

**Insurance sector:**

The main pieces of legislation in the insurance sector are Solvency II, EU Regulation 1286/2014 on packaged retail and insurance-based investment products (PRIIPs) and the Insurance Distribution Directive.

With regard to pre-contractual information, the requirements set out in the sectoral legislations are equal or more detailed than the ones laid down in the DMFSD. Thus, whenever sectoral legislations apply, the respective product-specific legislation applies. However, in insurance products that do not fall under these product-specific legislation, the DMFSD would apply.



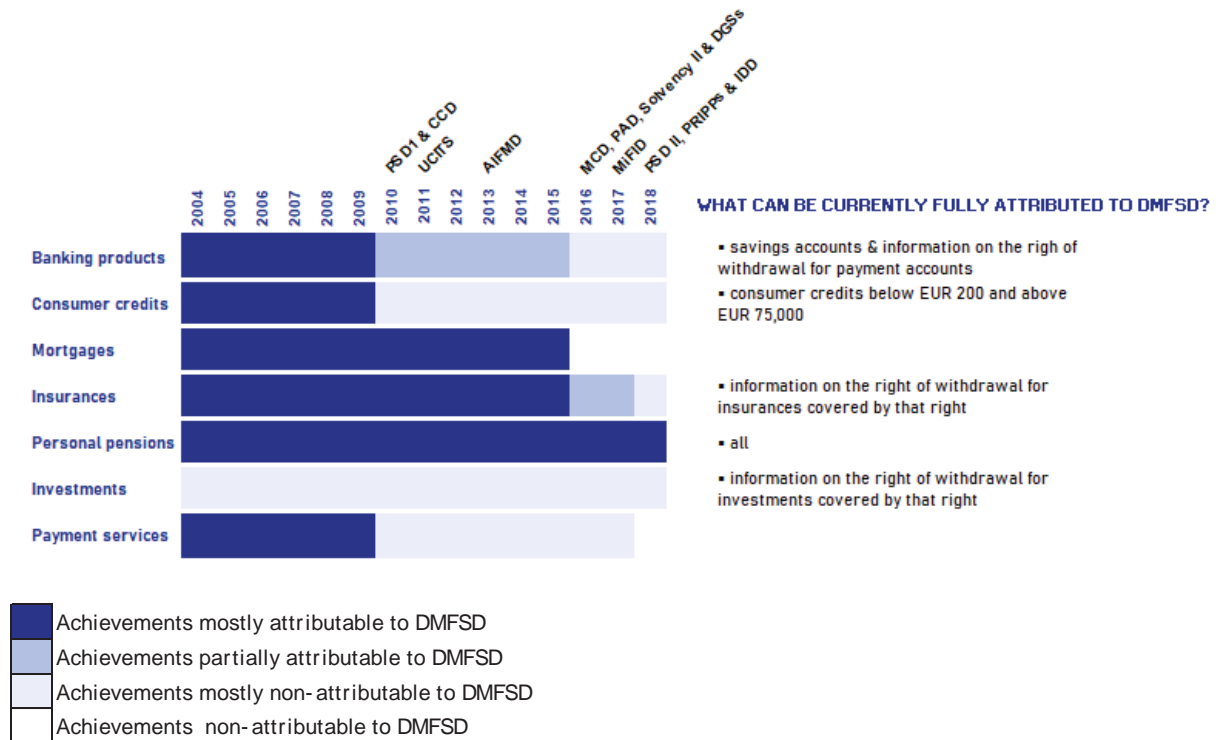
With regard to the right of withdrawal, neither the PRIIPs nor the IDD **provide a right of withdrawal**. The rules concerning the right of withdrawal stem from the DMFSD (Article 6). Thus, by way of example, the right of withdrawal for packaged retail and insurance-based investment products stems from the DMFSD.

The Commission proposal to revise Solvency II proposes to exclude small insurance firms from the scope of application of Solvency II, thus meaning that, whenever these excluded insurance firms provide insurance products contracted by means of distance communication, the DMFSD would apply.

EIOPA, in the Consumer Trends Report 2019, has remarked that financial innovation created by digitalisation has presented challenges to identify what is within and outside the scope of the IDD. Considering the relevance of the DMFSD in this sector, in particular as regards the right of withdrawal, this trend might require additional attention in order to ensure a high level of consumer protection and the fostering of the provision of insurance products cross-border.

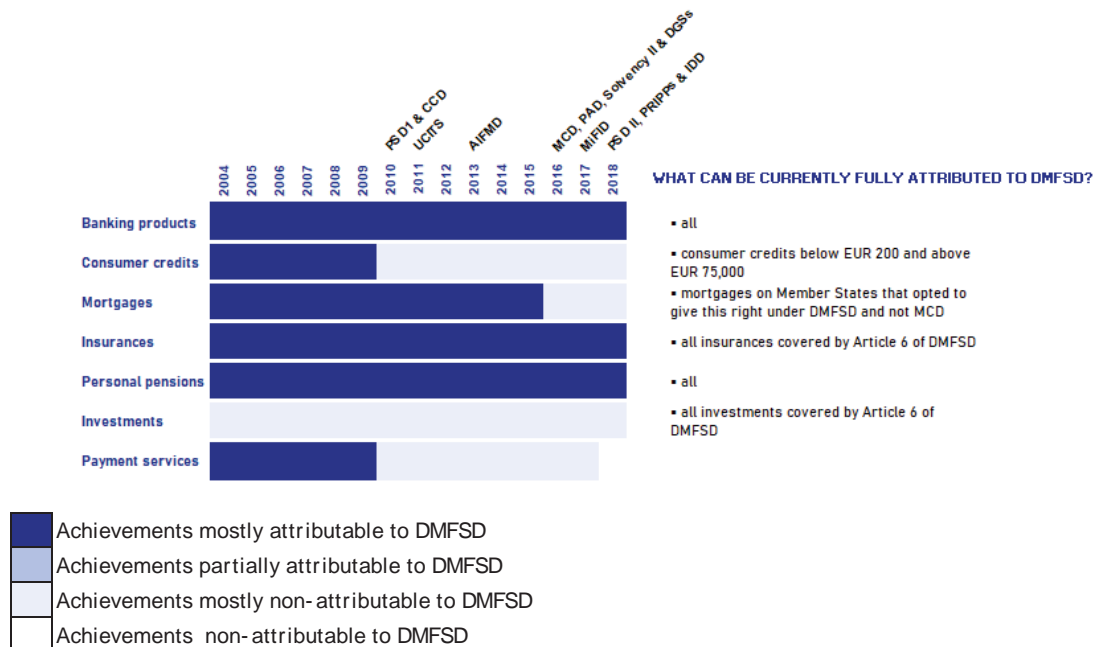
Likewise, a number of innovative insurance products sold online are appearing on the market, sold by Bigtech companies, such as by Amazon in Germany. In case these products do not fall under one of these three product-specific legislation, the DMFSD, through its safety net, would apply.

**Figure 3 Overview of the evolution of the attribution of achievements related to the provision of pre-contractual information**



Source: ICF (2020)

**Figure 4 Overview of the evolution of the attribution of achievements related to the provision on right of withdrawal**



Source: ICF (2020)

**ANNEX 7 EXAMPLES OF INDUSTRY MISLEADING AND UNFAIR PRACTICES AT ADVERTISING AND PRE-CONTRACTUAL STAGES**

*Table 25. Examples of misleading and unfair practices at advertising and pre-contractual stages*

| Practice   | Advertisement Pre-contractual |       |
|--|-------------------------------|-------|
|  | stage                         | stage |
| <b>Way in which information is provided</b>  |                               |       |
| Benefits emphasised while costs are hidden or given lower prominence   | ✓                             | ✓     |
| Key information missing or difficult to find   | ✓                             | ✓     |
| Information complex and difficult to understand e.g. because of use of jargon or complex terms   |                               | ✓     |
| Information layered and located in places that can be overlooked   |                               | ✓     |
| Information format not adapted to the medium used  |                               | ✓     |
| <b>Features which may accelerate consumer's purchase decision</b>  |                               |       |
| Speedy or 'one-click' products (a fast purchasing process, e.g. in under 15 minutes)   | ✓                             | ✓     |
| Promotional offers and consumer incentives, sometimes of a time-limited nature   | ✓                             | ✓     |
| <b>Design of the offers</b>  |                               |       |
| Pre-ticked boxes, with recommended add-on products   |                               | ✓     |
| Product bundling, e.g. a bank account offered with travel insurance  |                               | ✓     |
| <b>Consumer targeting and personalisation</b>  |                               |       |
| Targeting and personalisation i.e. content targeted to specific audiences or personalised based on individual characteristics                        | ✓                             | ✓     |
| Price discrimination i.e. charge consumers differently depending on their characteristics, in a way that may not be clear from the pricing structure |                               | ✓     |
| <b>Tools made available to consumers to assist their decision-making process</b>   |                               |       |
| Positive consumer reviews displayed prominently to create the impression of a highly desirable product   | ✓                             | ✓     |
| Product-tailored contact sections: lack of product-specific contact information sections   | ✓                             | ✓     |

*Source: LE Europe (2019)*

## ANNEX 8 BACKGROUND INFORMATION ON FINANCIAL SERVICES PRODUCTS SOLD AT A DISTANCE

Figure 5. Distribution of the total distance purchases in the last 5 years per type of product

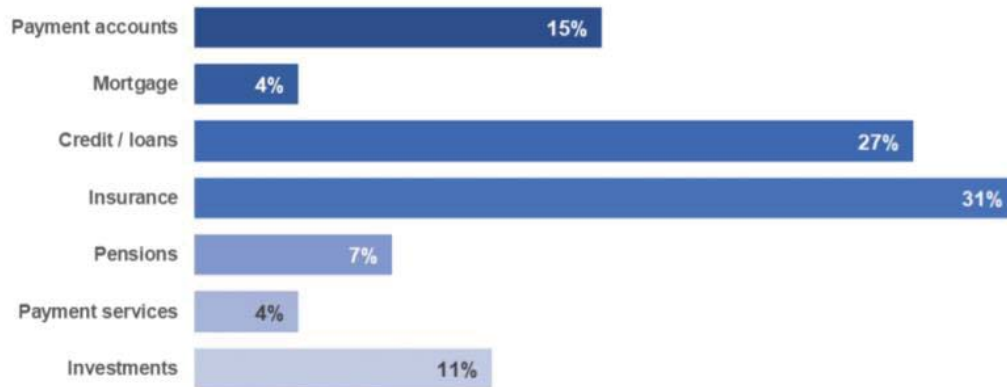
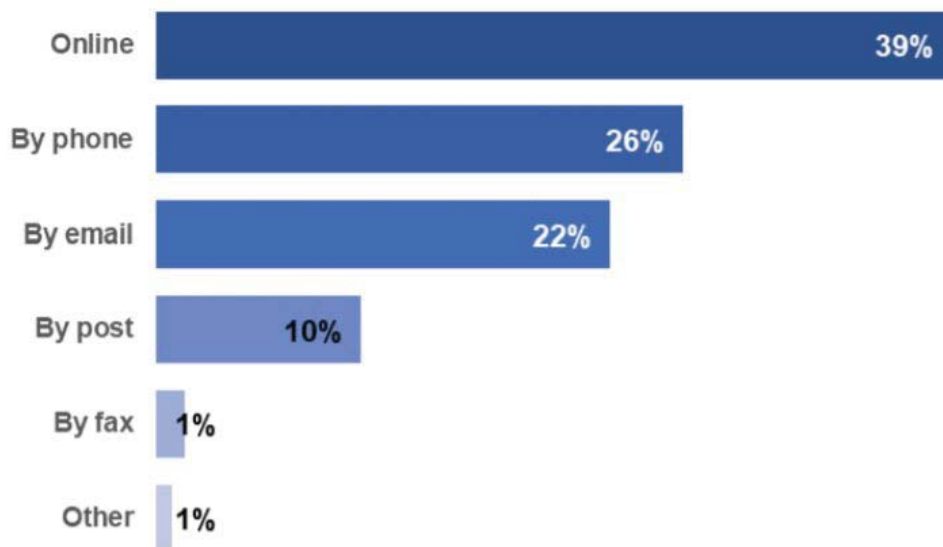


Figure 6. How was the distance contract negotiated?



## ANNEX 9 GLOSSARY

| <i>Term or acronym</i> | <i>Meaning or definition</i> <sup>118</sup>   |
|------------------------|---|
| Bank                   | A financial institution one of whose principal activities is to take deposits and borrow with the objective of lending and investing and which is within the scope of banking or similar legislation. <sup>119</sup>  |
| Behavioural biases     | Individuals' choices may vary systematically according to specific aspects of the decisions they face and/or the context in which their decisions are made. In such cases, market forces will not achieve an efficient outcome. <sup>120</sup>  |
| Chatbot                | A computer program that simulates human conversation through voice commands or text chats or both. <sup>121</sup>   |
| Cold calling           | A technique in which a salesperson contacts individuals who have not previously expressed interest in the offered products or services. Cold calling typically refers to solicitation by phone or telemarketing, but can also involve in-person visits, such as with door-to-door salespeople. <sup>122</sup>   |
| Comparison tools       | All digital content and applications developed to be used by consumers primarily to compare products and services online, irrespective of the device used (e.g. laptop, smartphone, tablet) or the parameter(s) on which the comparison is based (e.g. price, quality, user reviews). <sup>123</sup>  |
| Consolidator website   | Websites that sell products or services from a variety of suppliers directly to consumers.  |
| Consumer               | A natural person who in a contract or transaction acts for purposes which are outside his trade, business or profession   |
| Consumer Credit        | Loans granted to households, which in the case of these transactions are acting for purposes outside their business and profession. Mortgage loans for financing house building or buying (amongst others bridging loans) are excluded. It is the intention that consumer credit relates exclusively to credits used for buying goods and/or services which are consumed by the households individually. <sup>124</sup> |
| Consumer detriment     | A measure of harm that consumers may experience when market outcomes fall short of their potential. Consumer detriment can be structural or personal. <sup>125</sup>  |
| Cybercrime             | Criminal acts that are committed online by using electronic communications networks and information systems. <sup>126</sup>   |
| Credit Agreement       | An agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing  |

<sup>118</sup> Most of the definitions in this section were taken directly from the referenced sources (text is in italic).

<sup>119</sup> IASCF, Key term list; Commission Regulation (EC) No 1126/2008 (international accounting standards).

<sup>120</sup> European Commission, 2015. Better Regulation Toolbox [SWD (2015) 111].

<sup>121</sup> <https://www.investopedia.com/terms/c/chatbot.asp>

<sup>122</sup> <https://www.investopedia.com/terms/c/coldcalling.asp>

<sup>123</sup> [https://ec.europa.eu/info/sites/info/files/key\\_principles\\_for\\_comparison\\_tools\\_en.pdf](https://ec.europa.eu/info/sites/info/files/key_principles_for_comparison_tools_en.pdf)

<sup>124</sup> Eurostat, "European System of Accounts - ESA 1995", Office for Official Publications of the European Communities, Luxembourg, 1996

<sup>125</sup> European Commission, 2015. Better Regulation Toolbox [SWD (2015) 111].

<sup>126</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime_en)

|                            |   |
|----------------------------|---|
|                            | basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments. <sup>127</sup>   |
| Credit Card                | A card entitling the owner to use funds from the issuing company up to a certain limit. The holder of a credit card may use it to buy a good or service. When one does this, the issuing company effectively gives the card holder a loan for the amount of the good or service, which the holder is expected to repay. <sup>128</sup>                              |
| Credit institution         | An undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account. <sup>129</sup>  |
| Cross-selling practice     | The practice of offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package. <sup>130</sup>   |
| Crowdfunding               | The practice of funding a project or venture by raising monetary contributions from a large number of people. It is often performed via internet-mediated registries that facilitate money collection for the borrower (lending) or issuer (equity). <sup>131</sup>   |
| Cryptocurrencies           | A virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend. <sup>132</sup>   |
| Digital literacy           | The ability to use digital technology, communication tools and/or networks appropriately to solve information problems in order to function in an information society. <sup>133</sup>   |
| Digital wallet or e-wallet | An electronic device, website, software system, or database that facilitates commercial transactions by storing a consumer's credit card, shipping address, and other payment data. <sup>134</sup>  |
| Distance contract          | Any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. <sup>135</sup> |
| Durable medium             | Any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. <sup>136</sup>   |
| Digital onboarding         | The process by which a prospective consumer, without physically meeting the supplier and in a totally digitalised manner, is on-boarded by the  |

<sup>127</sup> Consumer Credit Directive (2008/48/EC).

<sup>128</sup> Farlex Financial Dictionary, 2012.

<sup>129</sup> Regulation (EU) no 575/2013 of the European parliament and of the council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

<sup>130</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

<sup>131</sup> European Banking Authority, Glossary for financial innovation.

<sup>132</sup> <https://www.investopedia.com/terms/c/cryptocurrency.asp>

<sup>133</sup> Knobel, M. and Lankshear, C., 2006. Digital literacy and digital literacies: Policy, pedagogy and research considerations for education. Nordic Journal of digital literacy, 1(01), pp.12-24.

<sup>134</sup> <https://www.dictionary.com/browse/e-wallet>

<sup>135</sup> Distance Marketing of Financial Services Directive.

<sup>136</sup> Distance Marketing of Financial Services Directive.



|  |   |
|--|---|
|  | supplier and becomes a client of the said supplier.   |
| Financial literacy                         | Capability of consumers and small business owners to understand retail financial products with a view to making informed financial decisions. <sup>137</sup>  |
| Financial service                          | Any service of a banking, credit, insurance, personal pension, investment or payment nature. <sup>138</sup>   |
| Fintech                                    | Technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services. <sup>139</sup>  |
| Full harmonisation (maximum harmonisation) | In the case of full harmonisation Member States must implement the EU measures but may not enact or retain any rules which depart from them. <sup>140</sup>   |
| Implementation                             | The process of making sure that the provisions of EU legislation can be fully applied. For EU Directives, this is done via transposition of its requirements into national law, for other EU interventions such as Regulations or Decisions other measures may be necessary (e.g. in the case of Regulations, aligning other legislation that is not directly touched upon but affected indirectly by the Regulation with the definitions and requirement of the Regulation). Whilst EU legislation must be transposed correctly it must also be applied appropriately to deliver the desired policy objectives. <sup>141</sup> |
| Incremental costs and benefits             | Costs and benefits that would occur if a particular course of action is taken, compared to those that would have been obtained if that course of action had not been taken. <sup>142</sup>  |
| Information asymmetries                    | Situations in which some agent in a trade possesses information that other agents involved in the same trade do not. <sup>143</sup>   |
| Insurance                                  | A contract, represented by a policy, in which an individual or entity receives financial protection or reimbursement against losses from an insurance company.  |
|  |   |
| Intermediary                               | A natural or legal person who is not acting as a supplier and who, in the course of his trade, business or profession: (a) presents or offers financial service agreements to consumers; (b) assists consumers by undertaking preparatory work in respect of financial service agreements; and/or (c) concludes financial service agreements with consumers on behalf of the supplier. <sup>144</sup>   |

<sup>137</sup> European Commission. (2007). Survey of Financial Literacy Schemes in the EU27. Available at: [http://ec.europa.eu/finance/finservicesretail/docs/capability/report\\_survey\\_en.pdf](http://ec.europa.eu/finance/finservicesretail/docs/capability/report_survey_en.pdf).

<sup>138</sup> Distance Marketing of Financial Services Directive.

<sup>139</sup> European Banking Authority, Glossary for financial innovation.

<sup>140</sup> European Parliamentary Research Service, 2015, Competence in private law - The Treaty framework for a European private law and challenges for coherence.

<sup>141</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>142</sup> <https://financial-dictionary.thefreedictionary.com/Incremental+costs+and+benefits>

<sup>143</sup> [https://siteresources.worldbank.org/DEC/Resources/84797-1114437274304/Asymmetric\\_Info\\_Sep2003.pdf](https://siteresources.worldbank.org/DEC/Resources/84797-1114437274304/Asymmetric_Info_Sep2003.pdf)

<sup>144</sup> Based on the definition of intermediary in the Consumer Credit Directive. The main difference is that in this case the intermediary does not have to receive a fee.

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|---------------------------------------|--|
| Means of distance communication       | Any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the distance marketing of a service between those parties. <sup>145</sup>  |
| Mortgage loan                         | Consumer real estate credit, usually extended on a long-term basis with the mortgaged property as security. <sup>146</sup>   |
| Mystery shopping                      | The activity of pretending to be a normal customer when you are employed by a company to check how its products or services are being sold. <sup>147</sup>   |
| Non-banks                             | In general, these are non-monetary financial corporations. More specifically, they include insurance corporations and pension funds, financial auxiliaries, and other financial intermediaries. <sup>148</sup>   |
| Non-credit institution                | Any creditor that is not a credit institution. <sup>149</sup>  |
| Peer-to-peer lending (or P2P lending) | A consumer credit service that allows businesses and individuals to borrow money, from many individuals who are ready to lend, instead of borrowing it from a single source. Peer-to-peer platforms used for P2P lending set out the rates and terms of transactions and enable the completion of these transactions. <sup>150</sup>   |
| Payday loan                           | A small amount and short-term (up to one year) personal loan. <sup>151</sup>   |
| Payment accounts                      | Means an account held in the name of one or more consumers which is used for the execution of payment transactions. <sup>152</sup>   |
| Payment services                      | services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account; services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account; execution of payment transactions; issuing of payment instruments and/or acquiring of payment transactions; money remittance; payment initiation services; and account information services. <sup>153</sup> |
| Personal loan                         | Credit granted to a private person for non-commercial purposes solely on the basis of that person's creditworthiness, income, and financial circumstances. <sup>154</sup>  |
| Personal pension product              | A product which: (a) is based on a contract between an individual saver and an entity on a voluntary basis and is complementary to any statutory or occupational pension product; (b) provides for long-term capital accumulation with the explicit objective of providing income on retirement and with limited possibilities for early withdrawal before that time; (c) is neither a statutory nor an occupational pension product. <sup>155</sup>                           |
| Product bundling or Bundling          | The offering or the selling of a credit agreement in a package with other  |

<sup>145</sup> Distance Marketing of Financial Services Directive.

<sup>146</sup> American State Bank, Banking Glossary.

<sup>147</sup> Cambridge Business English Dictionary, 2011.

<sup>148</sup> European Central Bank, 2016, Bank lending survey for the euro area, Glossary.

<sup>149</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

<sup>150</sup> <https://www.investopedia.com/terms/p/peer-to-peer-lending.asp>

<sup>151</sup> European Credit Research Institute (ECRI), 2019, Price rules in consumer credit: should the EU act?

<sup>152</sup> Payment Accounts Directive.

<sup>153</sup> Payment Services Directive.

<sup>154</sup> Dictionary of Banking, UBS 1998 – 2019.

<sup>155</sup> Pan-European Personal Pension Product Regulation.

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|---|---|
| practice  | distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services. <sup>156</sup>  |
| Right of withdrawal                                   | Consumer's right to terminate a contract without reason within a specified time period, provided certain conditions are fulfilled. <sup>157</sup>   |
| Robo-advice   | The provision of advice through digital platforms that provide automated, algorithmic investment services with minimal human supervision  |
| Savings accounts                                      | Is an interest-bearing deposit account held at a bank or another financial institution which provides a small interest rate. The financial providers may limit the number of withdrawals that consumers can make from their savings account each month. <sup>158</sup> Savings accounts provide instant (“sight deposits”) or time-limited (“time deposits”) access to funds. <sup>159</sup>  |
| SECCI (Standard European Consumer Credit Information) | A standardised form designed to show exactly what a finance agreement contains. The form will include key details such as type of credit, Annual Percentage Rate (APR), number and frequency of payments, and total amount owed. <sup>160</sup>   |
| Stakeholder   | Any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention. <sup>161</sup>   |
| Stakeholder consultation                              | A formal process of collecting input and views from citizens and stakeholders on new initiatives or evaluations/ fitness checks, based on specific questions and/or consultation background documents or Commission documents launching a consultation process or Green Papers. When consulting, the Commission proactively seeks evidence (facts, views, opinions) on a specific issue. <sup>162</sup>   |
| Sweeps  | A set of checks carried out on websites simultaneously to identify breaches of EU consumer law in a particular sector. The sweeps operate in a two-step action process, comprising of (a) screening websites to identify breaches of consumer law in a given online market, and (b) enforcement in which national authorities ask traders to take corrective actions. Sweeps are coordinated by the European Commission and carried out simultaneously by national enforcement authorities in participating countries. <sup>163</sup> |
| Trading platform                                      | The software that enables investors and traders to place trades and monitor accounts through financial intermediaries. Oftentimes, trading platforms will come bundled with other features, such as real-time quotes, charting tools, news feeds, and even premium research. <sup>164</sup>   |
| Transposition   | Describes the process of incorporating the rights and obligations set out in an EU Directive into national legislation, thereby giving legal force to the   |

<sup>156</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

<sup>157</sup> IATE EU terminology database, COM-Terminology Coordination, based on: European Commission > Rights & principles applicable when you buy goods or services online.

<sup>158</sup> Investopedia. Savings account. Available at: <https://www.investopedia.com/terms/s/savingsaccount.asp>.

<sup>159</sup> European Commission (2006). Current accounts and related services. Available at:

[http://ec.europa.eu/competition/sectors/financial\\_services/inquiries/interim\\_report\\_2.pdf](http://ec.europa.eu/competition/sectors/financial_services/inquiries/interim_report_2.pdf).

<sup>160</sup> Credit Plus, 2019, Glossary, available at <https://www.creditplus.co.uk/car-finance-glossary/secci/>.

<sup>161</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>162</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>163</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/sweeps\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/sweeps_en).

<sup>164</sup> <https://www.investopedia.com/terms/t/trading-platform.asp>

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|                    | provisions of the Directive. The Commission may take action if a Member State fails to transpose EU legislation and/or to communicate to the Commission what measures it has taken. In case of no or partial transposition, the Commission can open formal infringement proceedings and eventually refer the Member State to the European Court of Justice. <sup>165</sup>         |
| Virtual currencies | A type of unregulated, digital money which is issued and usually controlled by its developers and used and accepted among the members of a specific virtual community. <sup>166</sup> Virtual currencies are digital representations of value are not issued nor guaranteed by a central bank or public authority and consequently they are not (conventional) fiat currency (FC). |

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<sup>165</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>166</sup> ECB (2012): “Virtual Currency Schemes”. European Central Bank, Frankfurt.