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**COMMISSION STAFF WORKING DOCUMENT**

**EVALUATION**

**of Directive 2002/65/EC concerning the distance marketing of consumer financial services**

{SEC(2020) 375 final} - {SWD(2020) 262 final}

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## 1. INTRODUCTION

### Overview of the Distance Marketing of Financial Services Directive's provisions

The Distance Marketing of Financial Services Directive (DMFSD)<sup>1</sup> applies to financial services of banking, credit, insurance, personal pension, investment or payment nature sold at a distance<sup>2</sup>. It was adopted on 23 September 2002 and implemented two years later. Its objective was to contribute to the progressive consolidation of the single market in distance selling of financial services while simultaneously providing a high level of consumer protection by harmonising consumer protection rules.

To this end, the Directive:

- Obliges the supplier of financial services to provide the consumer<sup>3</sup> with information on the supplier, the financial product, the distance contract and redress and compensation, prior to conclusion of the contract (Articles 3, 4 and 5).
- Ensures that the consumer can withdraw from the contract for most financial services without incurring liability and without giving any reason, during a specified cancellation period (often referred to as a 'cooling-off' period) (Articles 6 and 7).
- Prohibits the supply of services without explicit prior consent of the consumer (Article 9).
- Prohibits unsolicited communications without the prior consent of consumers if automatic calling or fax machines are used, or, for other distance means of communication, where the consumer has expressly objected (Article 10).

The Directive was intended to cover all consumer financial services (horizontal scope) sold through all types of distance means of communication (technology-neutral approach). At the time of the Directive's adoption, there was limited EU legislation on the marketing of specific consumer financial services. At national level, most EU Member States did not have legislation covering pre-contractual information requirements, the right of withdrawal, or a ban on unsolicited services and unsolicited communication for financial services sold through distance means of communication.

### Purpose of the Evaluation

This Staff Working Document presents the result of the REFIT<sup>4</sup> evaluation of the Directive, which was carried out in 2019 and finalised in 2020.

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<sup>1</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

<sup>2</sup> The distance contract is 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>3</sup> A consumer is a natural person who in a contract or transaction acts for purposes which are outside his trade, business or profession.

<sup>4</sup> The Regulatory Fitness and Performance Programme, or REFIT, is the Commission's programme for ensuring that EU legislation remains fit for purpose and delivers the results intended by EU lawmakers.

As mentioned above, the Directive aims at ensuring the free movement of financial services in the single market by harmonising consumer protection rules governing this area. Since 2002, the distance marketing of financial services has changed in light of the digitalisation and the commercial practices used online by providers. In parallel, the legal framework for retail financial services has evolved significantly, including through the development of product-specific legislation (in relation to consumer credit<sup>5</sup>, mortgages, insurance, investment products or payment services<sup>6</sup>) or specific consumer protection elements. These developments were already mentioned as requiring continuous monitoring in the 2009 Commission Communication on the review of the Directive<sup>7</sup>, launched to comply with the obligation to review the functioning of distance marketing in financial services to ensure the adequate development of cross border distance marketing in this sector, set in Article 20 of the Directive. The 2009 Communication concluded that the market for distance selling of consumer financial services across borders at the time was very small, but that it was likely to increase, because of the growing popularity of online transactions.<sup>8</sup>

A behavioural study carried out as a follow-up to the 2017 Consumer Financial Services Action Plan<sup>9</sup> further confirmed the important changes that have affected the way financial services are sold at a distance and their impacts on consumers.<sup>10</sup>

Against this background, the Commission launched a fully-fledged evaluation of the Directive to assess whether its rules are still fit for purpose in the new legal, economic and technological environment. In line with the Better Regulation guidelines and toolbox<sup>11</sup>, this evaluation assesses the effectiveness, efficiency, relevance, coherence and EU added value of the Distance Marketing of Financial Services Directive, including the scope for burden reduction and simplification.

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<sup>5</sup> 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>6</sup> 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>7</sup> Communication from the Commission to the Council and the European Parliament - Review of the Distance Marketing of Consumer Financial Services Directive (2002/65/EC), COM(2009) 626 final.

<sup>8</sup> The Communication also highlighted that there was no evidence that consumers were facing problems arising from incorrect implementation of the Directive, nor that the legal diversity resulting from Member States using to a varying extent the options contained in the Directive was having a direct impact on the low level of cross-border distance marketing of financial services. This is why the Directive wasn't amended at the time. However, it should be noted that in most Member States national implementation laws only came into force from 2005/2006 onwards.

<sup>9</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - Consumer Financial Services Action Plan: Better Products, More Choice, COM/2017/0139 final.

<sup>10</sup> Under Action 12 of the Action Plan, the Commission has published in April 2019 the results of a Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services. [https://ec.europa.eu/info/sites/info/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/digitalisation\\_of\\_financial\\_services\\_-\\_main\\_report.pdf](https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf)

<sup>11</sup> European Commission, *Better Regulation: Guidelines and Toolbox*. [https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en)

## Scope of the Evaluation

The evaluation assesses whether the original objectives of the Directive have been achieved, how it works together with other legislation in the field of retail financial services, consumer protection and data protection, what are its costs and benefits per stakeholder<sup>12</sup> type (consumers, businesses and authorities), and whether it has potential for burden reduction and simplification.

The analysis also assesses whether the tools of the Directive correspond to original and current needs, and its EU added-value. The evaluation focuses on developments since 2002. All the provisions of the Directive are assessed as well as the regulatory choices<sup>13</sup> allowed by the Directive which were made by Member States.

The evaluation covers all EU Member States, although in some instances information and data gathering refer only to a limited sample. These instances are indicated in the text of this Staff Working Document.

## 2. BACKGROUND TO THE INTERVENTION

### Context of the EU intervention and intervention logic

The Directive was introduced at the beginning of the 2000's in light of the expected expansion of e-commerce and of the distance selling of financial services through digital means. In 1997, a Directive on the protection of consumers in respect of distance contracts<sup>14</sup> had been adopted, but it did not apply to financial services.

The dot-com era was already at an advanced stage and dot-coms<sup>15</sup> were expected to transform the economy. Digitalisation and cross-border commerce among EU citizens was low at the time of the Directive's adoption. However, it was expected that internet usage and e-commerce would surge in parallel with the transformation of the market. Hence, it was essential to guarantee the smooth operation of the internal market for consumers to be able to negotiate and conclude contracts at distance, including with suppliers established in other Member States<sup>16</sup>. The Directive was meant to address the changes affecting the way financial services were sold at a distance (new distribution channels, notably distance selling via mail, telephone and digital mediums).

At the time, there was no detailed EU legislation regulating the marketing of financial services to consumers, so there was a **need** to establish a legal framework at Community level capable of ensuring the free movement of financial services, while safeguarding consumer interests and guaranteeing a high level of consumer protection, also in view of future needs of the market and EU citizens. The Directive is a full harmonisation Directive, hence Member States cannot adopt provisions other than those laid down by the Directive in areas it harmonises. However, in the area of pre-contractual information, Member States can maintain or introduce more stringent rules.

The Directive had **two main mutually-reinforcing objectives**: that of increasing consumer protection in the distance selling market of financial services in the EU to generate consumer trust and that of helping consolidate the single market of financial services. These general objectives were operationalised through more **specific objectives**

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<sup>12</sup> Any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention.

<sup>13</sup> Articles 6(1), 6(3) and 7(2) of the Directive.

<sup>14</sup> Directive 97/7/EC on the protection of consumers in respect of distance contracts

<sup>15</sup> Business model where companies operate mostly over the Internet.

<sup>16</sup> Recital 4 of the Directive.

**and relevant provisions (inputs):** through harmonised rules, the Directive would ensure that consumers are better informed of the financial services sold at a distance, that they would be able to withdraw from certain contracts and that they would be protected against unsolicited communications and services. Member States, when implementing the Directive, would also have to put in place adequate sanctions in case providers fail to comply and redress mechanisms for consumers to complain.

These inputs would then lead to **outputs** at Member State level (transposition<sup>17</sup> of the Directive, setting up the appropriate bodies for implementing enforcement, and monitoring, enforcing and ensuring access to redress) and at financial providers' level (compliance with the Directive and the training of staff).

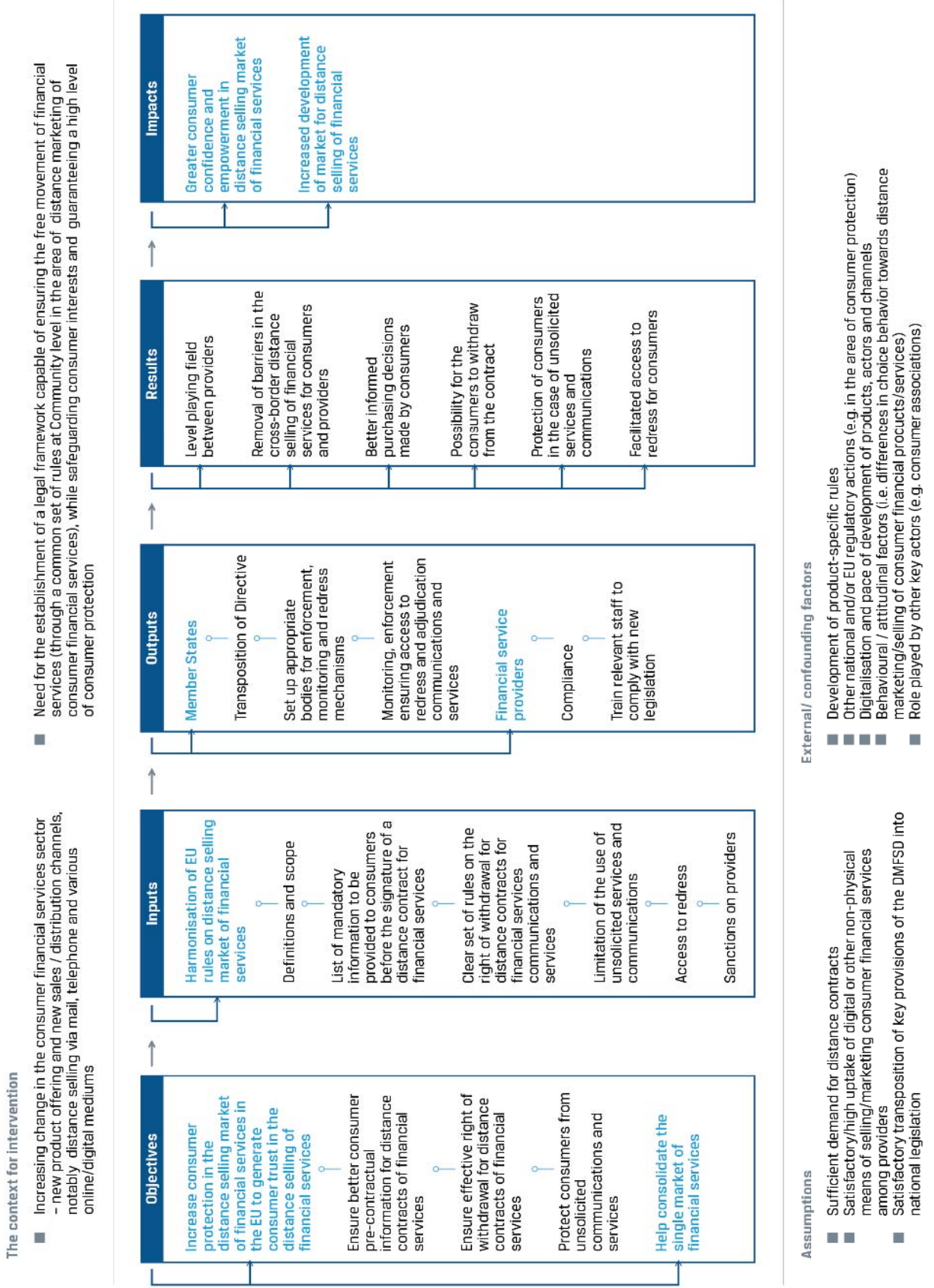
The expectation (**results**) was that the Directive would create a level playing field among providers selling financial services at a distance, that it would remove barriers to the cross-border distance selling of financial services and that it would improve the level of compliance of providers. In turn, consumers would benefit from being better informed about the financial products available and from being able to cancel the contract if they had changed their mind; moreover, consumers would be protected from unwanted services and communications and would have facilitated access to redress. Ultimately, the Directive was expected to improve consumer confidence and empowerment in the distance selling market of financial services and increase the development of this market (**impacts**).

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<sup>17</sup> Describes the process of incorporating the rights and obligations set out in an EU Directive into national legislation, thereby giving legal force to the 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.



Figure 1. *Intervention logic model*



## **Baseline - the situation before interventions**

The main baseline for the evaluation is the situation prior to the adoption of the Directive. The evaluation therefore focuses on developments since 2002, time from which the distance marketing of financial services changed in light of digitalisation and the commercial practices used online by providers.

### The distance retail financial sector leading up to 2002-2004

During 2000-2004 financial services represented an average of 5.6% of the total market household expenditure<sup>18</sup>. According to the Standard Eurobarometer 205<sup>19</sup> (2003), the most common financial products in the EU-15 at the time were current bank accounts, followed by credit cards<sup>20</sup> and life insurance.

Results from the Standard Eurobarometer 205 (2003) and the Special Eurobarometer 230 (2005) suggested that cross-border purchases were not commonly made during 2003-2004. For instance, the vast majority of respondents to the Eurobarometer 230 survey (85%) spontaneously indicated that they did not obtain financial services from firms located in another Member State.<sup>21</sup> 5% of them indicated they had purchased a bank account from another EU Member State, while 2% had purchased a credit card and 2% a car insurance.

At the time of the adoption and implementation<sup>22</sup> of the Directive, only a small share of financial service sales were conducted using distance means of communication such as fax, telephone, email or other online activity<sup>23</sup>. However, this situation was expected to rapidly change: on the offer side, an increasing number of bank branches were closed

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<sup>18</sup> Eurostat (2019). Final consumption expenditure of households by consumption purpose, nama\_10\_co3\_p3.

<sup>19</sup> The Standard Eurobarometer was established in 1974. Each survey consists of approximately 1000 face-to-face interviews per country. Reports are published twice yearly. Reproduction is authorised, except for commercial purposes, provided the source is acknowledged. Special Eurobarometer reports are based on in-depth thematic studies carried out for various services of the European Commission or other EU Institutions and integrated in the Standard Eurobarometer's polling waves. <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/General/index>

<sup>20</sup> 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>21</sup> It should be noted that foreign financial institutions located in the country in which the respondent is resident are not included.

<sup>22</sup> 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>23</sup> According to Eurobarometer 230, in 2005 less than 15% of the respondents had used internet to make a bank transaction and only around 9% had used internet to make other financial transaction. Available data also suggest that in 2004, between 2% and 3.7%<sup>23</sup> of the EU 27 population purchased at least one financial service online.

down in this period<sup>24</sup> with their activities being replaced by dematerialized contacts with consumers (first by phone and progressively through Internet). On the demand side, digital inclusion was increasing steadily, with the share of EU-15 citizens using the internet frequently growing from 38% in 2003<sup>25</sup> to 41% in 2004.

#### Level of consumer trust in distance financial services

In the period 2000-2004, available data shows a low level of financial literacy<sup>26</sup> among consumers and a difficulty in understanding the information provided by financial institutions or relating to financial services. For example, according to Eurobarometer survey 205, 58% of respondents disagreed that the information they received from financial institutions was clear and understandable.

As highlighted by the Organisation for Economic Co-operation and Development (OECD), the lack of financial education and consumer awareness, together with information asymmetry<sup>27</sup>, weakens the relationship between households and financial institutions<sup>28</sup>. In fact, in this period a significant share (41%) of respondents to the Eurobarometer survey 205 disagreed with the statement that their rights as consumers are adequately protected in relation to financial services. The same survey shows a low level of trust in the use of distance means of communication (phone and Internet) for banking and payment transactions but also a limited appetite<sup>29</sup> for purchasing a financial product or service from another Member State.

#### Barriers to the cross-border provision of financial services

Two types of obstacles to the cross-border provisions of financial services could be observed at the time on the demand side: (1) natural obstacles, such as differences in language and culture, consumer trust in established national suppliers, distance, and the desire for personal contact; (2) policy-induced obstacles, such as different tax treatment of foreign financial services/products, the exchange risk linked to a national currency, insufficient knowledge of cross-border redress procedures<sup>30</sup>, different level of protection and uncertainty about consumer rights. This is corroborated by the results of Eurobarometer 205, where a significant share of respondents (72%) highlighted a range of concerns that point towards both types of obstacles<sup>31</sup>.

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<sup>24</sup> For example, from the supply side there were signs of the increasing digitalisation of the banking sector, with the number of bank branches per 100,000 inhabitants declining in most of the EU countries (e.g. in Germany dropped by 4%, in Belgium by 7% and in United Kingdom 2%) between 2003 and 2004.

<sup>25</sup> 2003 is the first year for which data relating to digital inclusion are available (Eurostat, 2019, Digital inclusion – individuals, isoc\_bdek\_di).

<sup>26</sup> The OECD defines financial literacy as a ‘combination of awareness, knowledge, skill, attitude and the behaviour necessary to make sound financial decisions and ultimately achieve individual financial wellbeing’. In OECD INFE (2011). Measuring Financial Literacy: Core Questionnaire in Measuring Financial Literacy: Questionnaire and Guidance Notes for conducting an Internationally Comparable Survey of Financial literacy. Paris: OECD, p. 3.

<sup>27</sup> Situations in which some agent in a trade possesses information that other agents involved in the same trade do not.

<sup>28</sup> OECD INFE (2009). Financial Education and the Crisis: Policy Paper and Guidance.

<sup>29</sup> As regards consumer preferences, according to Eurobarometer 205, 9% of respondents reported that they would open a current bank account from a provider based in another Member State, followed by 8% who would apply for a credit card, 7% for shares/bonds, 6% for investment funds and 5% for mortgages and life insurance.

<sup>30</sup> Heinemann, F. and Jopp, M. (2002). The Benefits of a Working European Retail Market for Financial Services.

<sup>31</sup> For example, 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

From the financial service providers' perspective, there were also barriers<sup>32</sup> to offering financial services in another Member State. This includes institutional and technical barriers<sup>33</sup>, differences in law and regulation<sup>34</sup> and difficulties in understanding/penetrating local domestic markets<sup>35</sup>.

### 3. IMPLEMENTATION / STATE OF PLAY

#### Transposition of the Directive

The provisions of the Directive have been transposed into national legislation in all Member States<sup>36</sup>. Although most Member States replicated the provisions of Articles 3-10 literally, some of them have laid down further rules to ensure more stringent guarantees for consumers. Eighteen Member States<sup>37</sup> made use of the regulatory choices set out in Articles 6(1)<sup>38</sup>, 6(3)<sup>39</sup> and 7(2)<sup>40</sup>.

According to Article 21 of the Directive, Member States should have implemented the Directive by **October 2004**. However, by the end of 2004, only 11<sup>41</sup> Member States had brought into force the national laws, regulations and administrative provisions necessary to comply with the Directive. Most Member States actually transposed the Directive in 2005 and 2006. Spain<sup>42</sup> and Luxembourg<sup>43</sup> adopted the Directive only after the Court of Justice of the European Union (CJEU) had decided on infringement cases against them, transposing the text in July 2007 and December 2006, respectively.

#### Market context and developments

##### Main trends in the evolution of the (distance) selling of financial services since 2004

###### *The financial services sector and the digitalisation of society*

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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>32</sup> Final Report to DG SANCO (2008). Analysis of the economic impact of Directive 2002/65/EC on the conclusion of cross-border contracts for financial services between suppliers and consumers within the internal market.

<sup>33</sup> Lack of harmonised payment systems, tax problems, difficulties in concluding contracts electronically, need to maintain multiple channels for delivery and communication

<sup>34</sup> National anti-money laundering requirements, lack of harmonisation of relevant Member State legislation or absence of EU legislation, differences in consumer protection rules among different financial products and EU markets, regarding, for example, disclosure rules and withdrawal rights, inconsistency between regulation of face-to-face and distance selling.

<sup>35</sup> Legal uncertainty regarding the applicable law, lack of understanding of domestic retail financial services markets, difficulties in marketing in other Member States

<sup>36</sup> See Annex 5 on legal analysis

<sup>37</sup> BE, BG, HR, CY, DK, FR, IE, IT, LV, MT, NL, PL, PT, RO, SI, ES, SE, UK.

<sup>38</sup> CY, HR, IT, SI.

<sup>39</sup> BE, BG, DK, ES, FR, HR, IE, IT, NL, PL, PT, SE, UK.

<sup>40</sup> HR, LV, MT, PL, PT, RO.

<sup>41</sup> AT, CY, DK, EE, DE, LV, LT, PL, RO, SI, UK.

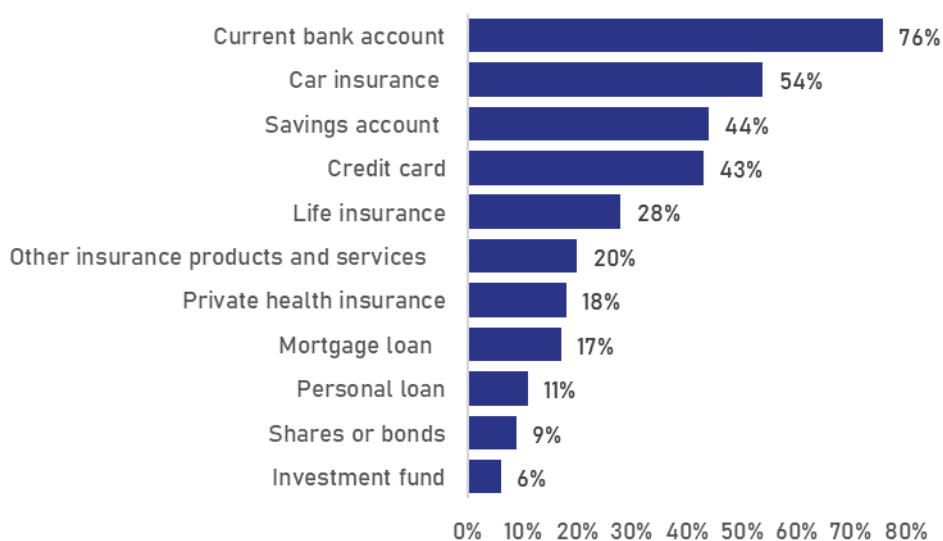
<sup>42</sup> C-141/06.

<sup>43</sup> C-127/06.

Between 2005 and 2017, the average share of financial services and insurance services as a percentage of EU total household expenditure<sup>44</sup> was 5.5%. After the 2007-2008 global financial crisis, the financial and insurance sector – which were heavily impacted by the crisis - recovered slowly but steadily. In 2018, the financial services sector constituted 4.3% of the total market added value<sup>45</sup> and of the GDP of the EU-28.

According to the 2016 Eurobarometer 446 Financial Products and Services survey, only 7% of consumers reported not having a financial service. The same Eurobarometer survey shows that current bank accounts are the most popular financial product in 2016 followed by car insurance, savings accounts<sup>46</sup> and credit cards. Investment funds and shares and bonds were the least popular financial products.

Figure 2. Most common financial product in the EU-27 for 2016



Source: Eurobarometer 446 Financial Products and Services (2016)

While before 2004 the digitalisation of financial services was still a relatively recent phenomenon, the period from 2005 to 2018 saw several substantial changes, in line with the development of new technologies. In terms of digital inclusion, the share of EU citizens using the internet regularly (once a week up to every day) increased steadily from the previous period. For the EU-27, this share grew from 36% in 2004 to 83% in 2018<sup>47</sup>. In the period from 2014 and 2019, the Digital Economy and Society Index<sup>48</sup> increased by 35%.

<sup>44</sup> See household consumption expenditure classified by consumption purpose according to the COICOP classification (Classification of Individual Consumption by Purpose, see also Commission Regulation 113/2002 of 23 January 2002), Eurostat.

<sup>45</sup> Eurostat (2019). Gross value added and income by industry breakdowns, nama\_10\_a10 (accessed on 7 October 2019).

<sup>46</sup> It is an interest-bearing deposit account held at a bank or another financial institution. The financial providers may limit the number of withdrawals that consumers can make from their savings account each month. Savings accounts provide instant (“sight deposits”) or time-limited (“time deposits”) access to funds.

<sup>47</sup> Eurostat (2019). Individuals – internet use, isoc\_ci\_ifp\_iu.

<sup>48</sup> DESI, a composite index that summarises relevant indicators on Europe’s digital performance and tracks the evolution of EU Member States in digital competitiveness: <https://ec.europa.eu/digital-single-market/en/desi>



### *Cross-border sales*

The share of EU citizens making cross-border purchases remained relatively low over the period 2005-2018, but a slight increase is visible between 2011 and 2016. According to the Eurobarometer surveys, current bank accounts remained the most popular type of financial services or products contracted in another EU country between 2003 and 2016, with 3% of respondents having opened a bank account with a provider based in another Member State in 2016. The next most popular financial services were credit cards, car insurance and investment funds, shares or bonds, all with an average 1%.

According to the Eurobarometer surveys, in 2011 6% of respondents that had purchased financial products reported having purchased these products from another Member State<sup>49</sup>, while in 2016 this share increased by 2 percentage points to 8%<sup>50</sup>.

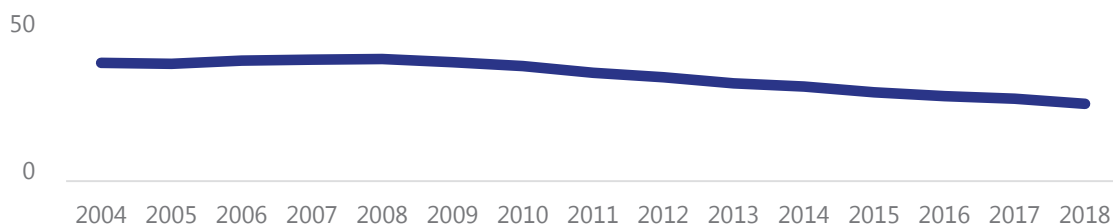
Regarding cross-border purchases of financial services using distance means, 15% of the respondents to the consumer survey realised as part of the evaluation claimed to have already done so or tried to do so. Of the surveyed consumers that concluded the purchase of a financial service using a distance means of communication (nearly half of the respondents), a quarter did it from a provider in another Member State.

#### *The distance marketing of financial services: changes on the supply side*

According to a Eurobarometer survey in 2016<sup>51</sup>, the financial and insurance activities sector is the economic sector with the highest percentage of providers currently engaged in distance selling (71% of the respondents) and currently selling via mobile commerce or e-commerce (50% of the respondents). Currently, the majority of traditional EU financial providers tend to use online sales channels to sell financial services domestically and cross-border.

While traditional providers continue to offer services both offline and online<sup>52</sup>, they have been reducing their physical presence as shown by the significant drop in the number of local bank branches in the EU (more than one third since 2004) and the 4% drop in the number of automated teller machines (ATM) per 100,000 inhabitants in Europe since 2016<sup>53</sup>.

*Figure 3. Commercial bank branches (per 100,000 adults) in EU-28*



<sup>49</sup> Eurobarometer 373 (2011).

<sup>50</sup> Eurobarometer 446 (2016).

Please note that there could be some limitations in the comparison between data used in the report, due to difference in the size of the sample and in the methodology between the consumer survey performed for the supporting study to the evaluation and data from the Eurobarometers.

<sup>51</sup> European Commission (2016). Retailers' attitudes towards cross-border trade and consumer protection.

<sup>52</sup> The LE Europe study analysed 200 financial providers with an online (mobile and/or desktop) presence in seven countries and found that 91% of traditional providers used both offline and online channels.

<sup>53</sup> Statista (2019). European ATM numbers 2005-2018.

*Source: database World Development Indicators (2019)*

In parallel, the fast development of FinTech<sup>54</sup> has changed the supply landscape in the financial services sector. While during 2000-2004 FinTech companies were in their early stages in the EU, a wave of FinTechs were established around 2011<sup>55</sup>. A mapping of providers of retail financial services using digital channels in seven EU countries<sup>56</sup> showed that 10.5% of 114 new providers founded between 2006 and 2017 were FinTechs<sup>57</sup>. These non-traditional providers use mainly online channels for marketing and distribution of their financial services, with some offering their services exclusively online. Currently, the FinTech sector has a considerable transaction value (about EUR 682 billion<sup>58</sup>). The total transaction value, the number of users and the transaction value per user are expected to keep increasing at least until 2023.<sup>59</sup> Traditional providers have adapted to this development by either collaborating directly with FinTechs or by developing their own financial technology solutions.

Compared to the situation before the introduction of the Directive, the provision of distance retail financial services has therefore undergone significant changes, in relation to the means of distance communication<sup>60</sup> used by consumers<sup>61</sup> (with Internet being predominantly used by consumers) as well as the tools put forward by providers (websites, apps, automated chatbots<sup>62</sup> and advice, video and voice calls).

New and more complex financial services/products<sup>63</sup> have appeared on the market (e.g. virtual currencies<sup>64</sup> or peer-to-peer lending<sup>65</sup>). Online consolidators<sup>66</sup> and comparison

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<sup>54</sup> 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 (see Annex 6).

<sup>55</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, p. 20.

<sup>56</sup> DE, ES, FI, FR, LT, RO, UK.

<sup>57</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, p. 20.

<sup>58</sup> Slightly less than one third of the transaction value of the sector in the US and China. Statista (2018). Total value of investments into Fintech companies in Europe from 1st quarter 2010 to 4th quarter 2017 (in USD billion). Available at: <https://www.statista.com/statistics/643100/vc-backed-fintech-companies-total-investment-europe/>

<sup>59</sup> Statista (2019). Fintech Report 2019. Statista Digital Market Outlook.

<sup>60</sup> 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>61</sup> According to the surveys, between 63-75% of consumers reported that they used their desktop, laptop, tablet or mobile phone to search/receive information on financial services. By 2010, there was already a strong increase in the use of the internet for financial services and other activities. The findings from the Open Public Consultation and consumer survey suggest that communications via means that do not depend on the internet (such as mail, post and telephone) remain important today. About 12-28% of respondents to the two surveys used the telephone to search/receive information on financial services (other communication means such as fax may now be redundant). These means of communication were available to consumers when the Directive was adopted in 2002.

<sup>62</sup> A computer program that simulates human conversation through voice commands or text chats or both (see Annex 6).

<sup>63</sup> Lumpkin, S. (2010). Consumer Protection and Financial Innovation. *OECD Journal: Financial market trends*, 2010(1), p. 117-139.

<sup>64</sup> Virtual currencies are defined by the ECB as ‘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

websites have emerged as new intermediaries<sup>67</sup> used by consumers to compare and sometimes purchase financial products.

Data analytics allows to personalise marketing, advice and services/products based on user data and consumer behaviour predictions<sup>68</sup> and social media sites are used as new marketing tools<sup>69,70</sup>.

Finally, the speed at which consumers can purchase a financial service<sup>71,72</sup> has dramatically increased. The Behavioural study on the digitalisation of the marketing and distance selling of retail financial services highlights new practices to speed up consumers' decisions at advertising and pre-contractual stage, like speedy or 'one-click' products (a fast purchasing process) enabling consumers to obtain products rapidly (e.g. in under 15 minutes).

*The distance marketing of financial services: evolution of sales using distance means of communication*

The market penetration of financial services provided online has increased between 2004 and 2018. While the Eurostat data for the period 2004-2015 do not seem directly comparable with the data for the period 2016-2018, both show an upward trend in financial activities carried out over the internet.<sup>73</sup>

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community'. See Digital Watch (2019). E-Money and virtual currencies. Available at: <https://dig.watch/issues/e-money-and-virtual-currencies> (accessed on 15 October 2019).

<sup>65</sup> In 2017, the peer-to-peer (P2P) lending market in Europe was valued at EUR 3.8 billion and it is forecasted to reach 170% of growth by 2022. Peer to peer lending (or P2P lending) is 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 (see Annex 6).

<sup>66</sup> Consolidator websites sell products or services from a variety of suppliers directly to consumers.

<sup>67</sup> Intermediary is 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>68</sup> European Commission Financial Services User Group (2016). Assessment of current and future impact of Big Data on Financial Services. Available at:

[https://ec.europa.eu/info/sites/info/files/file\\_import/1606-big-data-on-financial-services\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/1606-big-data-on-financial-services_en_0.pdf)

<sup>69</sup> Leeflang, P.S., Verhoef, P.C., Dahlström, P. and Freundt, T. (2014). Challenges and solutions for marketing in a digital era. *European Management Journal*, 32(1), pp. 1-12.

<sup>70</sup> Shirisha, M. (2018). Digital Marketing Importance in the New Era. *Marketing*.

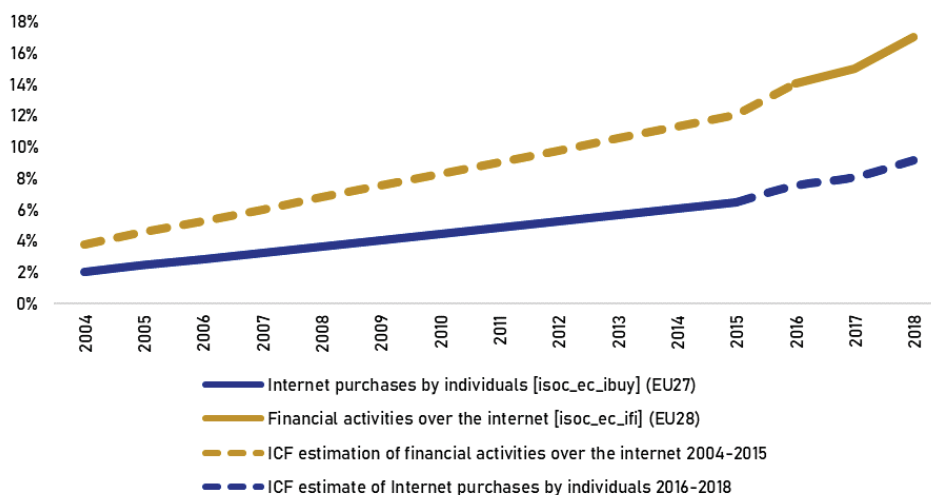
<sup>71</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>72</sup> This aspect was highlighted by the EBA opinion on disclosure to consumers buying financial services through digital channels as well as by a few consumer and business associations.

<sup>73</sup> In Figure 4, the Eurostat data available for 2004-2015 and 2016-2018 is presented. While the question asked in the 2004-2018 surveys was identical, the prompts provided to the respondents were more detailed in the 2016-2018 surveys, which can explain the difference. As such, the figure shows the ICF estimates for the dataset after/before the 20015/2016 discontinuity. These estimates provide an upper and lower bound to the percentage of individuals that have purchased a financial service online in the 12 months prior to the survey.



Figure 4. *Financial services purchases or activities over the internet between 2004 and 2018 (% of the EU population aged between 16 and 74)*

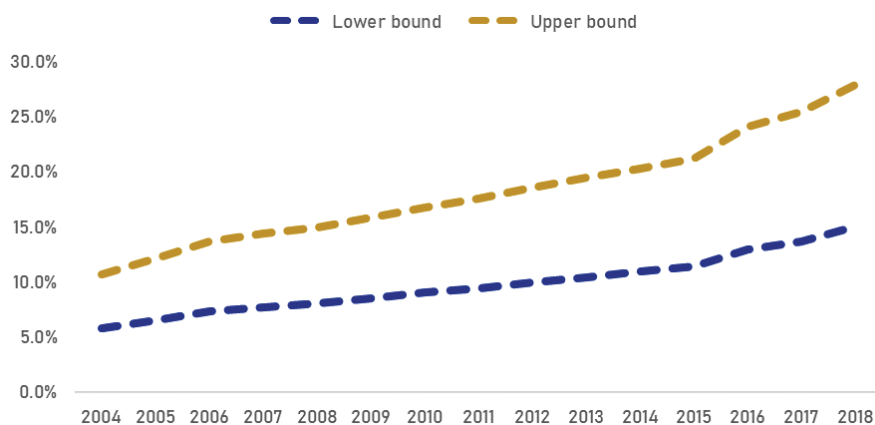


Source: Eurostat [isoc\_ec\_ifi] and [isoc\_ec\_ibuy]/

Of the financial activities carried out over the internet in the period 2016-2018<sup>74</sup>, the most popular were purchase or renewal of insurance (76%), purchase of investments (29%) and taking a loan or arranging credit (23%)<sup>75</sup>.

Using the data on the proportion of purchases over the internet (online and e-mail) on the total purchases of financial services using distance means gathered in the consumer survey (i.e. see Annex 7), it is possible to estimate that the percentage of individuals that in 2018 have purchased at least one financial service at a distance in the last 12 months is between 15% and 28% (see Figure 5).<sup>76</sup>

Figure 5. *ICF estimation of distance sales of financial services between 2004 and 2018 (% EU population aged between 16 and 74)*



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7).

<sup>74</sup> It does not include all financial services, such as payment services and pensions.

<sup>75</sup> These figures are also confirmed by the consumer survey, which shows that over the last five years, the most contracted financial service at a distance was insurance (31%), followed by credit/loans (27%) and payment accounts (15%). Among the least contracted services were mortgages (4%) and pensions (7%).

<sup>76</sup> The rationale for this calculation is the following: if 9%-17% are online purchases, and those correspond to 61% of the distance purchases of financial services, then 9%/61%-17%/61% are distance purchases.

The results of the consumer survey show however that only half of the consumers that used distance means of communication to search for a financial service end up buying it at a distance. For the remaining, 33% decided not to purchase the financial service and 19% decided to finalise the transaction face-to-face. The main reason why respondents chose not to purchase the service was because they had concerns about purchasing it at distance and the provider did not have a physical branch (43%).

### Legal developments having impacted the distance selling of financial services

Since the adoption of the Directive, there have been significant changes to the legislative framework which have impacted the distance selling of financial services. The adoption from 2008 of EU legislation aimed at regulating specific financial products is particularly pertinent to consider for this evaluation. An overview of these acts is provided below while more detailed explanations can be found in Annex 5 *Legal analysis: transposition, infringements, case law and coherence*.

#### *Horizontal legislation*<sup>77</sup>:

- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (e-privacy Directive or EPD).
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive or UCPD).
- Directive 2011/83/EU on consumer rights (the Consumer Rights Directive or CRD).
- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the General Data Protection Regulation or GDPR).
- Regulation (EU) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market (the Geo-blocking Regulation).
- Directive (EU) 2019/2161 on better enforcement and modernisation of EU consumer protection amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU

#### Anti-money laundering:

- Directive 2005/60/EC (AMLD III) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- Directive 2015/849 (AMLD IV) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
- Directive (EU) 2018/843 (AMLD V) amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

#### *Product-specific legislation:*

##### Banking products:

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<sup>77</sup> The Geo-blocking Regulation and the Consumer Rights Directive do not currently apply to financial services.

- Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the Payment Accounts Directive or PAD).
- Directive 2014/49/EU on deposit guarantee schemes.

#### Credits:

- Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC (Consumer Credit Directive or CCD).
- Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive or MCD).

#### Insurance:

- Solvency II Directive on the taking-up and pursuit of the business of insurance and reinsurance (2009/138/EC).
- Directive (EU) 2016/97 on insurance distribution (the Insurance Distribution Directive or IDD).

#### Personal pension:

- Regulation (EU) 2019/1238 on a pan-European Personal Pension Product (PEPP).

#### Investments:

- Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV or UCITS).
- Directive 2011/61/EU on Alternative Investment Fund Managers (AIFM Directive).
- Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation).
- Directive 2014/65/EU on markets in financial instruments (the Market in Financial Instruments Directive or MiFID).
- Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (Prospectus Regulation).

#### Payment services:

- Directive 2007/64/EC on payment services in the internal market (the Payment Services Directive or PSD I).
- Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (e-Money Directive).
- Directive (EU) 2015/2366 on payment services in the internal market (PSD II).

### **Complaints and infringements**

In 2011, the Commission found that Sweden had failed to fulfil its obligations under the Directive, introducing right of withdrawal provisions that went beyond those laid down in Article 7(1) of the Directive. The national legislation provided that if a consumer exercises his right of withdrawal, a trader could require the consumer to pay for that part of the financial service already supplied, as well as payment of reasonable costs for

services relating to the time before the trader accepted the consumer's confirmation of their withdrawal.<sup>78</sup>

Also in 2011, the Commission referred Italy to the CJEU for inadequate transposition of the Directive, concerning the right of withdrawal from a car insurance contract, whereby the right was not guaranteed if an accident took place during those 14 days.<sup>79</sup> In 2012, Italy amended the previous provisions and ensured the proper implementation of the Directive.

More details on the transposition of the Directive, on relevant infringements and case law and on the legislation interacting with the Directive can be found in Annex 5 *Legal analysis: transposition, infringements, case law and coherence*.

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<sup>78</sup> Press Release of 27 January 2011, Distance marketing of financial services: the Commission takes Sweden to the Court of Justice, [https://ec.europa.eu/commission/presscorner/detail/sw/IP\\_11\\_98](https://ec.europa.eu/commission/presscorner/detail/sw/IP_11_98).

<sup>79</sup> Press Release of 29 September 2011, Distance marketing of financial services: Commission refers Italy to the Court of Justice, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_1091](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_1091).

#### 4. METHOD

The evaluation started in December 2018 with the publication of the roadmap and was overseen by an Inter-service Steering Group (details in Annex 1 *Procedural information*). It drew on the following main data sources – in addition to data on infringement cases and complaints already at the disposal of the Commission.

##### **Study to support the evaluation of the Directive**

A Study<sup>80</sup> was outsourced to ICF S.A. to feed into the evaluation of the Directive. The study, which started in May 2019, relied on a combination of sources and methods, including extensive in-depth consultation with stakeholders, a consumer survey, desk research, legal analysis, literature review, cost and benefits analysis and mystery shopping<sup>81</sup> exercises (both offline and through phone). It also took account of the studies carried out for the **2009 Review of the Directive**<sup>82</sup> and the April 2019 Behavioural Study on the digitalisation of the distance marketing and selling of financial services<sup>83</sup>.

The study included an analysis of the distance market of financial services and its evolution over the past 17 years. In addition to an assessment of each evaluation question, the study also included 10 topical case studies: two covering the provision of information and the role of intermediaries and eight covering specific financial services products (namely virtual currencies, peer-to-peer lending, pay-day loans/cash advance, savings accounts, investments, insurances (non-life and life), credit cards and money transfers and payments).

##### **Stakeholder consultations**

This evaluation relies on an extensive stakeholder consultation<sup>84</sup>, which includes several strands to achieve complementarity, representativeness and comprehensiveness in the views collected.

An **Open Public Consultation** ran between 9 April 2019 and 2 July 2019. The questionnaire of the public consultation was made available on the Commission's website<sup>85</sup> in all 24 EU languages. The questionnaire was structured in two main parts, with the first part targeting the general public and the second part targeting key stakeholders involved in the implementation of the Directive or who have detailed knowledge of the functioning of the different elements of the Directive and their impact on the distance selling of financial services. The public consultation received

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<sup>80</sup> ICF S.A., Study in Support of the Evaluation of Directive 2002/65/EC on the distance marketing of consumer financial services (to be published in 2020).

<sup>81</sup> 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>82</sup> Communication from the Commission to the Council and the European Parliament - Review of the Distance Marketing of Consumer Financial Services Directive (2002/65/EC), COM(2009) 626 final.

<sup>83</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>84</sup> 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>85</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786/public-consultation_en)

114 responses. A summary report<sup>86</sup> of the findings was published in May 2019, and the full report of all stakeholder consultation undertaken for the evaluation is annexed hereto.

**Targeted consultation** was conducted by the external consultants under the study to complement and deepen the feedback collected in the Open Public Consultation. It included 63 in-depth interviews with selected key stakeholders in the main groups concerned by the Directive: national authorities, EU and national business associations of financial service providers and EU and national consumer associations. In addition, an **online survey** of financial providers allowed to collect the views of a few additional providers.

An **online consumer survey** was carried out in eight Member States<sup>87</sup> to collect the views and experience of 1,043 consumers. The sampling strategy used to select the Member States and ensure their representativeness allowed to extrapolate the results to the 28 Member States.

Several **ad-hoc meetings** with relevant stakeholders (e.g. consumer associations and industry representatives) took place in the course of 2019 to discuss the evaluation.

In evaluating the Directive, the Commission also consulted two relevant expert groups: the Expert Group on the Implementation of Directive 2008/48/EC on Consumer Credit<sup>88</sup> (given that national authorities in charge of Directive 2008/48/EC are also responsible for the Directive) and the Financial Services User Group<sup>89</sup>. The first one met on two occasions (January and November 2019) to provide input to the Commission from the different national perspectives. The second one had an exchange in March 2019 with the Commission on the impact of digitalisation on marketing and selling of financial services, following a presentation of a Commission behavioural study on this topic<sup>90</sup>

While carrying out the evaluation, the Commission -often in the context of ad-hoc meetings- has received several **contributions from different stakeholders** (e.g. position papers, statistics, report etc.), which have all been passed on to the contractor for the purpose of the study and/or analysed by the Commission itself. It is also worth underlining the **opinion from the European Banking Authority (EBA)** on disclosure to consumers buying financial services through digital channels<sup>91</sup>, published on 23 October 2019, which also fed into this evaluation.

### **Limitations and robustness of findings**

The data collection and analysis carried out have a number of intrinsic limitations, whose impact has been mitigated to a maximum possible extent.

Data on the state of the distance marketing of financial services and its evolution since 2002, on the problems faced by consumers and associated detriment and costs incurred by stakeholders is scarce or punctual. In order to mitigate these limitations, additional industry stakeholders have been approached to gather additional input and in-depth desk research has been carried out to fill in existing gaps. However, the limitations to the hard data available increased the number of estimates and assumptions within the

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<sup>86</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786/public-consultation_en)

<sup>87</sup> Poland, Czechia, Sweden, Finland, France, Italy and Germany, and Netherlands.

<sup>88</sup> Code E02180 of the Register of Commission Expert Groups and Other Similar Entities.

<sup>89</sup> Code E02594 of the Register of Commission Expert Groups and Other Similar Entities.

<sup>90</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>91</sup> EBA Opinion on disclosure to consumers buying financial services through digital channels, 2019.



evaluation and these are mentioned in this document where appropriate. All estimates and assumptions are comprehensively explained in Annex 7 *Quantification methodology and limitations*.

It has also been difficult to assess the extent to which impacts on consumer protection and the distance market of financial services can be attributed to the Directive and not to other EU/national legislation and other factors. In order to mitigate this limitation, the evaluation team relied on the views of stakeholders and expert judgement to define the necessary assumptions.

Stakeholder interviews and surveys initially yielded a much lower response rate than expected. In order to boost the rate and provide sufficient time for stakeholders to share their views, the consultation period was prolonged and stakeholders were provided with different ways to contribute their views (such as phone interviews, online surveys etc.). The consumer survey carried out in the course of the supporting study allowed to mitigate the low number of individuals responding to the Open Public Consultation.

## **5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS**

This section presents the findings of the evaluation, based on the triangulation of evidence collected through the different means presented above. Findings are grouped under each of the Better Regulation criteria<sup>92</sup>, contributing to an in-depth analysis of the functioning of each of the key elements of the Directive.

### **RELEVANCE**

The relevance evaluation criteria look into the needs and problems of the target groups, and assess to what extent the Directive is in line with those needs and has contributed to addressing them.

#### **EQ1: To what extent do the objectives of the Directive correspond to the initial and current needs of consumers and providers?**

The evaluation found that the objectives of the Directive were in line with the expected needs of consumers and financial service providers at the time the Directive was introduced.

However, developments in the market and the emergence of new selling practices on the one hand and new insights in the area of consumer behaviour on the other hand, reveal that some consumer needs, such as understanding properly pre-contractual information online, are not fully addressed by the Directive. Also, Article 10 on the ban of unsolicited communications no longer seems relevant from the analysis performed.

The objective of consolidating the single market remains relevant but consumers and providers still face barriers in providing/accessing cross-border financial services.

The Directive was adopted as a first step to consolidate progressively the financial market and attain a high level of consumer protection (Recital 1), to address the needs of consumers (problems faced and general lack of trust in distance selling) and of providers (legal barriers, lack of level-playing field).

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<sup>92</sup> Effectiveness, efficiency, coherence, relevance and EU added value of the intervention.

Since the transposition of the Directive, significant developments have affected the market of distance marketing of financial services (see Section 3), most notably digitalisation and the implementation of EU horizontal and product-specific legislation.

In spite of these developments, the evaluation concludes that the Directive and its objectives remain relevant to some extent. This is in line with the opinion of a significant majority of stakeholders. An overwhelming majority of business and consumer associations and national authorities (almost 80%) stated that the Directive meets current challenges and needs to some extent (45%) or completely (35%). Consumer associations had more difficulties in expressing an opinion. Some stakeholders noted that there are some gaps not properly addressed by the Directive. For instance, consumer biases have become more prevalent as a result of digitalisation. The way in which that information is presented and provided to consumers (means, format and time) via the various digital channels (e.g. smartphone apps) should be considered by the Directive.

### **Objective 1: Consumer protection and trust**

The baseline assessment reviews consumer needs at the time the Directive was introduced (see Section 2) and shows that a significant share of consumers (41%)<sup>93</sup> disagreed with the statement that their rights as consumers were adequately protected in relation to financial services.<sup>94</sup> At the time when the Directive was adopted, the assessment found that consumers had a low level of financial literacy<sup>95</sup>, as well as a low level of trust in using distance means of conducting financial transactions<sup>96</sup>.

However, as explained in Section 3, the provision of distance retail financial services has undergone significant changes, compared to the situation before the introduction of the Directive. In addition, the financial services market was - and still is - characterised by features that limit the ability of the market to work to the maximum benefit of consumers. This includes<sup>97</sup> the limited bargaining power that consumers enjoy versus financial institutions<sup>98</sup> and the low level of consumer experience in purchasing financial services due to infrequent purchases, which limits the possibilities for consumers to improve their decision-making process based on previous experiences. Faced with complex products, consumers experience difficulties in assessing their true costs and often rely on the information provided by the providers. These market features indicate that financial providers are often in a more advantageous position than consumers, given the information asymmetries, thus demonstrating the continued relevance of the Directive's objective to protect consumers to generate the necessary trust in the distance

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<sup>93</sup> Eurobarometer 205 (2003).

<sup>94</sup> This refers to all financial products independently of the means of communication used. Nevertheless, as there was no specific legislation applicable to face-to-face only or distance means only, all consumers were covered by the same legislation. We can assume that this provides an indication of the percentage of consumers of financial services at distance that considered that their rights as consumers were not adequately protected in relation to financial services.

<sup>95</sup> Altman, M. (2013). What behavioural economics has to say about financial literacy. *Applied finance letters*, 2(1), pp. 12-17.

<sup>96</sup> Eurobarometer 205 (2003) found that consumer trust in using distance means for banking transactions (e.g. phone or internet) was about 20%.

<sup>97</sup> Muller, P., Devnani, S., Heys, R. and Suter, J. (2014). Consumer protection aspects of financial services. Brussels: European Parliament. Directorate-General for Internal Policies.

<sup>98</sup> Due to several factors, some of which already mentioned (e.g., asymmetry of information), the financial service sector does not operate in perfect competition. Consequently, consumers have lower power to influence prices and conditions in a market that provides services and products that consumer need in their daily lives. See European Consumer Consultative Group, Opinion on consumers and vulnerability, Adopted on 7th February 2013 by ECCG Plenary.



selling market. The initial and current relevance of each key provision of the Directive are discussed in more detail below.

### ***Pre-contractual information***

Asymmetry of information (between consumers and financial providers) hinders the consumer decision-making process and can lead to poor choices and welfare losses or consumer detriment<sup>99,100,101,102</sup>. One of the main goals of consumer protection policy, therefore, is to remedy information issues.

At the time the Directive was introduced, evidence suggested that a significant share of consumers considered the information they received from financial institutions insufficient<sup>103</sup>, unclear and/or incomprehensible<sup>104</sup>. The use of distance means of communication and the expected increasing digitalisation of the financial sector were believed to (potentially) exacerbate these information asymmetry problems and malpractice related to information disclosure (e.g. complex products more easily accessible, information provided in a medium not easy to consult or safeguard).

Through the provisions on pre-contractual information (Articles 3, 4 and 5), the Directive addresses these needs<sup>105,106</sup> to some extent by harmonising the information that consumers should receive prior to the conclusion of a distance contract. By promoting the disclosure and transparency of key information before the contract is signed, the Directive supports consumers in assessing the quality and risks of financial services/products and comparing services/products from different providers, which should allow them to make more informed and better decisions<sup>107</sup>. This also contributes to increased consumer trust, as they feel more confident in their choices and are more aware of their rights. Financial providers also benefit, as more confident consumers tend to be more willing to purchase financial services.

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<sup>99</sup> A measure of harm that consumers may experience when market outcomes fall short of their potential. Consumer detriment can be structural or personal.

<sup>100</sup> Micklitz, H.W., Reisch, L.A. and Hagen, K. (2011). An introduction to the special issue on 'behavioural economics, consumer policy, and consumer law'. *Journal of Consumer Policy*, 34(3), pp. 271-276.

<sup>101</sup> Cartwright, P. (Ed.) (1999). *Consumer protection in financial services (Vol. 9)*. Kluwer Law International BV.

<sup>102</sup> Muller, P., Devnani, S., Heys, R. and Suter, J. (2014). Consumer protection aspects of financial services. Brussels: European Parliament. Directorate-General for Internal Policies.

<sup>103</sup> Eurobarometer 205 (2003) found that around 50% of consumers considered it fairly difficult or very difficult to know beforehand how much borrowing money was going to cost or how well they were covered by insurance policies.

<sup>104</sup> Eurobarometer 205 (2003) found that it was fairly difficult or very difficult for 60% of the respondents to understand information and risks involved with their mortgages, for more than 50% to compare information about different banks, mortgages and bank account charges and features. Almost 60% of the respondents disagreed with the statement 'the information I get from financial institutions is clear and understandable'.

<sup>105</sup> As disclosure and transparency alone may not be sufficient to protect consumers when products are complex and the financial literacy of a consumer is low. See, for example, Lumpkin, S. (2010). Consumer Protection and Financial Innovation: A few Basic Propositions. *OECD Journal: Financial Market Trends*.

<sup>106</sup> Micklitz, H.W., Reisch, L.A. and Hagen, K. (2011). An introduction to the special issue on 'behavioural economics, consumer policy, and consumer law'. *Journal of Consumer Policy*, 34(3), pp. 271-276.

<sup>107</sup> European Parliament (2014). Consumer Protection Aspects of Financial Services. Internal Market and Consumer Protection.

The national legal analysis found that **prior to the entry into force** of the Directive only 11 Member States<sup>108</sup> had national legislation that partially covered the disclosure of pre-contractual information for financial services sold through a distance means of communication, which suggests that the Directive addressed a **gap in protection at the national level**. It is estimated that the yearly potential outreach of this provision was between 15 and 27 million consumers.<sup>109</sup>

Currently, the Directive sub-objective of ensuring that consumers receive better pre-contractual information is **still generally relevant**. This was confirmed by the majority of the stakeholders from all groups consulted who considered the requirement to provide consumers with information about the service, its conditions and the supplier as totally or somewhat relevant/important<sup>110</sup>.

However, the way in which this objective is concretely **implemented** (through Articles 3, 4 and 5 of the Directive) seems to be aligned to consumer needs **only to some extent**. This is confirmed by the opinion of some stakeholders from all groups<sup>111</sup>.

Recent research<sup>112</sup> on consumer behavioural biases<sup>113</sup> shows that providing consumers with as much information as possible about the characteristics of services/products does not necessarily improve their decisions and can actually lead to poorer decisions due to behavioural biases. Consumers tend not to read long or very technical

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<sup>108</sup> BE, DK, EE, EL, ES, LV, NL, PT, SE, SK, UK.

<sup>109</sup> These figures were estimated by multiplying a) the population aged between 16 and 74 of the countries that did not have or had only partial legislation covering pre-contractual information before the implementation of the DMFSD (i.e. 251 million), by the percentage of people that had purchased at least one financial service at a distance in the last 12 months in 2004 (estimated to be between 5.7% and 10.7%). Due to lack of available data, this had to be estimated based on the available data for online sales and distribution of sales per distance means.

<sup>110</sup> Of the stakeholder groups, consumers were the most positive about the importance of receiving information about the service and its conditions and the supplier (96% found it somewhat or very important). In addition, national authorities are the ones expressing the most positive opinion regarding the relevance of the provision of pre-contractual information about both the product (94%) and the provider (100%), followed by consumers which overwhelmingly (more than 85%) consider the rights to having information about the main characteristics about the service and about the provider as “very important”. While all consumer associations considered the requirement to provide information about the provider relevant, one third of the providers and business associations considered it somewhat or totally irrelevant. The element of Article 3 considered least relevant by all stakeholders was the information requirement related to contracts negotiated over the phone. Regarding the information about the characteristics of the service, almost 40% of the consulted consumer associations and 40% of the industry stakeholders consider it somewhat or totally irrelevant. An analysis of all the consultations points out to the following reasons behind these results: decline of contracts done via phone calls; perceived low effectiveness because of the difficulty in providing the required information for consumers to fully “retain and/or understand” it during a phone call; difficulties in monitoring compliance with these requirements; other EU Legislation (see, for example, Article 5(2) and (3) and Article 6(7) of the Consumer Credit Directive).

<sup>111</sup> Data from interviews, surveys and position papers. No stakeholder mentioned that the Directive is completely aligned with the needs of consumers and providers and overall there are no evidence of significant disagreements between the various groups of stakeholders regarding this point. However, only some stakeholders (from all groups) indicated the reasons behind their position.

<sup>112</sup> Consumer and industry representatives highlighted these findings when asked to assess the relevance of the Directive.

<sup>113</sup> 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.

documentation<sup>114,115,116</sup>, possibly more so when using some digital devices<sup>117</sup>. This has also been pointed out by stakeholders from both industry and consumer associations.

Another relevant behavioural bias (framing bias) is related to the way consumers' ability to understand and compare the information is **influenced by how the information is presented** (e.g. style, structure and context) and how well it is adapted to the communication device<sup>118</sup>. Behavioural biases are often abused by financial providers at the advertising and pre-contractual stages to influence consumer decisions<sup>119</sup>. The choice architecture to which the consumer is confronted online (e.g. how the provider presents the offers to consumers, for instance by way of ranking or pre-ticking boxes, default options, speed of the transaction or ranking) hugely impacts consumers<sup>120</sup>.

In addition, consumers have **difficulties understanding complex financial products** and conditions. For instance, the 2010 Flash Eurobarometer 282 showed that more than 50% of the EU citizens surveyed would like to be offered simpler financial services and products, particularly pensions (71% agreed or strongly agreed), followed by savings accounts (63%), other investment products and mortgages (62%)<sup>121</sup>.

Recent market developments and practices used by providers, coupled with the intrinsic characteristics of the market, the low financial literacy level of consumers<sup>122,123,124</sup> and consumer behaviour biases, can significantly influence the ability of consumers to make well-informed decisions, reduce their trust in the market and lead to consumer detriment.

The majority of the consumers consulted<sup>125</sup> considered it very important that the information is presented prominently and immediately, in a format that enables its comparison with other products, and in a way that is adapted to the communication channel. These views are in line with the opinions expressed by consumer and business associations, EU and national authorities<sup>126</sup>, and with the findings from behavioural

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<sup>114</sup> Chater, N., Huck, S. and Inderst, R. (2010). Consumer decision-making in retail investment services: A behavioural economics perspective. Report to the European Commission/SANCO.

<sup>115</sup> Lefevre, A. and M. Chapman (2017). Behavioural economics and financial consumer protection. OECD Working Papers on Finance, Insurance and Private Pensions, No. 42. Paris: OECD Publishing. Available at: <http://dx.doi.org/10.1787/0c8685b2-en>

<sup>116</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>117</sup> G20/OECD (2018). 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-Age-2018.pdf>

<sup>118</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>119</sup> Lefevre, A. and M. Chapman (2017). Behavioural economics and financial consumer protection. OECD Working Papers on Finance, Insurance and Private Pensions, No. 42. Paris: OECD Publishing.

<sup>120</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>121</sup> Eurobarometer 282 (2009). Cross-border sales and consumer protection, p. 53.

<sup>122</sup> London Economics (2013).

<sup>123</sup> Luzak J. and Junuzović M. (2019).

<sup>124</sup> While a few EU countries have high rates of financial literacy (such as Denmark and Sweden, with 70% apiece), other EU countries perform below the global average, such as Romania (22%) and Portugal (26%). In Batsaikhan, U. and Demertzis, M. (2018). Financial literacy and inclusive growth in the European Union. Bruegel Policy Contribution Issue (08).

<sup>125</sup> See consumer survey and Open Public Consultation.

<sup>126</sup> See for example Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC, 2019.

studies that ‘emphasise the need to consider not just whether information is disclosed but how it is disclosed, in what format and in what context’<sup>127</sup>.

However, since the Directive does not go into the details on how or at which stage<sup>128</sup> information should be communicated to consumers, including how it should be adapted to the device used<sup>129</sup>, it could be argued that its **approach to consumer information is not entirely adapted** to today’s consumer needs and behaviour. It also does not address the choice architecture with which consumers are confronted and which frames the consumer journey. The complexity of the products available to consumers is also out of its scope.

The need to receive information in a way that enables **comparison** between services/products is also not fully addressed by the Directive as it is the case in some product-specific legislation<sup>130</sup>. This is becoming more relevant with the proliferation of comparison websites for financial services<sup>131</sup>, which are used by consumers as shortcuts to compare offers and which may not be adequately covered by the Directive<sup>132</sup>.

One point raised by some stakeholders from all groups relates to the relevance of the definition of ‘**durable medium**’<sup>133</sup> in a time when the most commonly used means of distance communication are websites and mobile apps (see also Annex 5 *Legal analysis*).

Finally, the **relevance** of the provisions on pre-contractual information seems to have been significantly **reduced** by the introduction of **product-specific legislation** (as the general civil law principle of *lex specialis* usually applies). This is because this legislation tends to be better adjusted to the service/product it regulates through specific information disclosure requirements (see EQ2). Besides, behavioural insights point to several problematic issues regarding pre-contractual information disclosure for financial services across the board – not only for distance selling, but for all sales<sup>134</sup>.

Nevertheless, the **provision of pre-contractual information** through the Directive **remains relevant**, to the extent that it applies to: (1) all current and future financial services that might not be regulated by product-specific legislation, and (2) services for which there is product-specific legislation that does not regulate the provision of pre-contractual information (as extensively as the Directive – see EQ2 and EQ12). This

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<sup>127</sup> Chater, N., Huck, S. and Inderst, R. (2010). Consumer decision-making in retail investment services: A behavioural economics perspective. Report to the European Commission/SANCO.

<sup>128</sup> The EBA, some national authorities and one business association indicated that it could be beneficial to define the timeline more concretely. Consumers reported that the information should ideally be provided by default, for example on the provider’s website and at least 24 hours before signature of the contract.

<sup>129</sup> EBA Opinion on disclosure to consumers buying financial services through digital channels, 2019.

<sup>130</sup> One business association indicated that having the same standardised form for all financial services would be difficult.

<sup>131</sup> In 2019, respondents to the Open Public Consultation (consumers) indicated that they searched for information on comparison websites in 25% of the times.

<sup>132</sup> Legal analysis of the Directive recital, scope and the definitions of “distance contract” and of “supplier” (Article 2) concludes that currently the Directive might not apply to all comparison websites but only to those that have a commercial activity and participates in the process of selling financial services/products to the consumers. A case-by-case assessment is needed.

<sup>133</sup> 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>134</sup> For instance, the use of complex information which is difficult to understand (e.g. use of jargon and complex terms) has the potential to cause consumer detriment, because individuals are susceptible to information overload - see LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.



is particularly important given that new developments in the financial service sector happen at a fast pace but introducing product-specific legislation takes a significant amount of time.

### ***Right of withdrawal***

The poor level of information and lack of consumer confidence at the time of adoption of the Directive indicated that consumers of financial services using distance means of communication were in a '*structurally disadvantageous position*' at the time of the conclusion of contracts, not being able to take an informed and free decision<sup>135,136</sup>. There was therefore a need to mitigate the risks of consumers behaving irrationally or acting under pressure when signing the contract<sup>137</sup> and to remedy information asymmetries by providing consumers with extra-time to reconsider the decision they had taken. The right of withdrawal was therefore inserted in the Directive to **address the risks of information issues and non-rational decisions**, which were expected to increase because of the digitalisation of financial services.

In addition, as financial services/products tend to be complex and involve substantial commitments (due to their duration, amount and risk<sup>138,139</sup>), lack of trust in suppliers and in information received could significantly prevent consumers from engaging in distance contracts. Allowing consumers to have a 'last exit' option was also thought to **increase consumers' confidence** in distance contracts and **promote purchases**. This therefore not only benefits consumers but also financial providers.

The legal analysis found that at the time the Directive was implemented only nine Member States<sup>140</sup> had national legislation providing (to some extent) the right of withdrawal for financial services sold through a distance means of communication, which suggests that this provision **addressed a gap** in consumer protection. It is estimated that the yearly potential outreach of this provision was between 11 and 20 million consumers.<sup>141</sup>

Those **needs persist today** and the **objective of the right of withdrawal remains relevant**. Consumers are still in an unfavourable position due to information asymmetries and/or their incapacity to make rational decisions at the moment of conclusion of the contract. In fact, digitalisation might partly contribute to weakening consumers' positions, as it has brought more complex financial products, increased the speed with which consumers can sign a contract and purchase a financial service (e.g. speedy, or 'one-click' products) and given providers the tools to better influence and

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<sup>135</sup> Steennot, R. (2013). The right of withdrawal under the Consumer Rights Directive as a tool to protect consumers concluding a distance contract. *Computer Law & Security Review*, 29(2), pp. 105-119.

<sup>136</sup> Tscherner, E. (2014). Can behavioural research advance mandatory law, information duties, standard terms and withdrawal rights? pp. 144-155.

<sup>137</sup> Eidenmüller, H. (2011). Why withdrawal rights? *European Review of Contract Law*, 7(1), pp. 1-24.

<sup>138</sup> Loos, M. (2009). Rights of withdrawal. Centre for the Study of European Contract Law Working Paper Series (2009/04).

<sup>139</sup> Muller, P., Devnani, S., Heys, R. and Suter, J. (2014). Consumer protection aspects of financial services. Brussels: European Parliament. Directorate-General for Internal Policies.

<sup>140</sup> DK, DE, EL, ES, LV, SK, UK, EE, PT.

<sup>141</sup> These figures were estimated by multiplying the population aged between 16 and 74 of the countries that did not have or had only partial legislation covering right of withdrawal before the implementation of the Directive (i.e. 188 million), by the percentage of people that had purchased at least one financial service at a distance in the last 12 months in 2004 (estimated to be between 5.7% and 10.7%). Due to lack of available data, this had to be estimated based on the available data for online sales and distribution of sales per distance means.

shape consumer behaviour. According to the consumer survey performed for the ICF support study for this evaluation, 20% of respondents who had purchased a financial service in the last five years, cancelled the contract within the period covered by the right of withdrawal.

Of the key provisions of the Directive, stakeholders consider the right of withdrawal the most relevant. More than **90% of the consumers** consulted through the Open Public Consultation indicated that having the **right of withdrawal is important** (for 75% it is very important), more than 85% of industry stakeholders and 100% of the national authorities consider it relevant. Only 38% of the consumer associations considered this provision relevant, with the remainder considering it somewhat irrelevant but mostly because consumers do not make use of it (see EQ3 for more details on the effectiveness of the right of withdrawal). For consumer associations, the concrete implementation of this right of withdrawal could be better aligned with consumer needs, for example through a convenient mechanism/procedure to exercise such right<sup>142</sup>.

The introduction of **product-specific legislation** that regulates the right of withdrawal had an impact on the relevance of this provision of the Directive. Nevertheless, it remains relevant to the extent that it applies to all current and future financial services, including those that are not covered by product-specific legislation and those covered by product-specific legislation that does not regulate this aspect<sup>143</sup> (see EQ2).

### ***Unsolicited services and communications***

The low levels of financial and digital literacy<sup>144</sup> at the time the Directive was adopted meant that consumers of financial services through distance means of communication were significantly exposed to abusive practices of financial providers. At the time the Directive was introduced, this was not considered satisfactorily covered by either European or national legislation<sup>145</sup>. The Directive aimed to **prevent financial providers exploiting the low levels of financial and digital literacy** of consumers by protecting them from unsolicited services and communications.

The **ban on unsolicited services** (Article 9) protects consumers from contractual obligations without their explicit consent by **prohibiting providers from supplying services/products without prior request** from the consumer and by ensuring that consumers are exempt from any obligation related to services to which they did not explicitly agree<sup>146</sup>. It is estimated that the yearly potential outreach of this provision was between 7 and 14 million consumers.<sup>147</sup>

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<sup>142</sup> Some consumer association mentioned that a model withdrawal form could be provided to consumers at the moment they sign the contract – see the study supporting the evaluation.

<sup>143</sup> Product specific legislation does not provide the right of withdrawal for accounts, insurances and pensions. According to the consumer survey these products represent about 55% of the market of financial services sold at distance.

<sup>144</sup> 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>145</sup> The national legal analysis found that only 10 Member States had national legislation that covered (to some extent) the ban on unsolicited services (AT, BE, DK, ES, FI, LV, PT, SE, SK, UK, EE) and 11 Member States addressed the issue of unsolicited communications (AT, BE, DK, ES, FI, LV, NL, PT, SE, SK, UK) for financial services sold through distance means of communication.

<sup>146</sup> No data are available on the prevalence of this issue.

<sup>147</sup> These figures were estimated by multiplying a) the population aged between 16 and 74 of the countries that did not have or had only partial legislation covering unsolicited services and communications before

The **ban on unsolicited communications** (Article 10) promoted consumers' right to privacy and limited their exposure to misleading or deceptive information. It is estimated that the yearly potential outreach of this provision was between 9-17 million consumers.<sup>148</sup>

At the time the Directive was drafted, a significant share of consumers considered the marketing techniques of financial institutions to be aggressive<sup>149</sup>. The expected **increase in digitalisation had a significant impact** on the number and consequences of **unsolicited communications**. In fact, spam (unsolicited communications via the internet) was considered to represent a growing problem for consumers, as it often included misleading or false information, potentially leading to monetary and psychological costs<sup>150</sup> and purchases of services/products under false assumptions. In 2001, spam represented about 7% of global email traffic, growing to 51% by 2003. About half of finance-related spam included false information in the 'from' or 'subject' lines<sup>151</sup>.

The **objective** to prevent consumers receiving unsolicited communications and services **is still relevant**. This is confirmed by more than 90% of the consumers consulted<sup>152</sup>, who indicated that they only want to be contacted by providers after giving their prior consent. Additionally, industry stakeholders (more than 70%) and national authorities (more than 85%) consider these provisions relevant. The majority of consumer associations (62.5%), however, consider them somewhat irrelevant<sup>153</sup> but the remainder indicated that they are very relevant.

**Digitalisation** has brought **new challenges** in this context. Providers now have tools that allow them to add services or obtain consumer consent by default (e.g. use of pre-ticked boxes), use chatbots or video applications to contact consumers directly, to personalise advertising and offers, and use new digital marketing channels such as social media sites. Some consumer associations and national authorities reported their concern with the difficulty of assessing whether consumers are really consciously giving their consent.

However, as pointed out by some stakeholders<sup>154</sup> and shown by the analysis of the interplay of these provisions and other EU legislation, **Article 10** (on the ban of unsolicited communications) **no longer seems relevant**, as it is covered extensively by other EU horizontal legislation (which applies to all current and future financial services, see EQ2). Furthermore, Article 10 is not technology-neutral, as it defines different rules depending on the type of communication channels, which makes some of the references no longer relevant (e.g. fax machines) and leads to inconsistencies, as the rules for 'automated calling systems without human intervention' are different from the rules for

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the implementation of the DMFSD (i.e. 130 million), by the percentage of people that had purchased at least one financial service at a distance in the last 12 months in 2004 (estimated to be between 5.7% and 10.7%). Due to lack of available data, this had to be estimated based on the available data for online sales and distribution of sales per distance means.

<sup>148</sup> Ibid.

<sup>149</sup> Eurobarometer 205 (2003). 57% of respondents agreed that 'the marketing techniques of financial institutions are aggressive', 21% disagreed and 21% did not know or did not answer.

<sup>150</sup> Li, X. (2006). E-marketing, Unsolicited Commercial E-mail, and Legal Solutions. *Webology*, 3(1).

<sup>151</sup> Li, X. (2006). E-marketing, Unsolicited Commercial E-mail, and Legal Solutions. *Webology*, 3(1), p. 7, footnote 6.

<sup>152</sup> See consumer survey and Open Public Consultation.

<sup>153</sup> This could be due to the fact that certain needs addressed by the Directive e.g. unsolicited communications are already covered by other legislation, as highlighted by some consumer associations.

<sup>154</sup> From different categories: consumers, industry and national authorities' representatives.

other means of communication, which include chatbots and pop-ups<sup>155</sup>. The analysis cannot draw the same conclusion on the relevance of the ban on unsolicited services, which remains relevant as amended by the Unfair Commercial Practices Directive (see EQ4).

## **Objective 2: Consolidate single market**

The **cross-border selling** of financial services using a distance means of communication was **very limited at the time** the Directive was introduced. The new distribution channel - internet - was viewed as a potential means to overcome some supply-side barriers and reduce the cost for businesses to enter another EU market<sup>156</sup>. However, other barriers to cross-border sales (from both the demand and supply side) remained.

Around the time of the introduction of the Directive, consumers indicated a **variety of reasons** for not buying financial services supplied in other EU Member States. Through its key provisions, the Directive aimed to address concerns relating to the quantity and quality of information, the risk of fraud and the different levels of consumer protection between Member States.

Regarding financial providers, **the Directive** sought to address some of their (expected) needs<sup>157,158</sup> for a better level playing field between providers across the EU and the **removal of barriers** preventing them from operating cross-border<sup>159</sup> (see Section 2). Indeed, the potential benefits of entering new markets would normally not justify the economic costs involved in adjusting to their legislation. The Directive harmonised the rules applicable to the distance selling of financial services in the pre-contractual phase<sup>160</sup>, promoting the reduction of economic costs, as well as the efficiency gains<sup>161</sup> intended to increase cross-border market<sup>162</sup>.

Regarding level playing field, while **digitalisation** was seen as a potential driver to increase cross-border sales in the EU, it was also expected to change the landscape of distance selling of financial services by fostering the entrance of new players (e.g. non-

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<sup>155</sup> Article 10(1) that applies to telephone contact requires the consumer's prior consent while Article 10(2) that applies to all other means of communication requires either consent from consumers or their lack of manifest objection.

<sup>156</sup> The e-Commerce Directive sets out a horizontal framework for the provision of online services (information society services), including in principle financial services provided online. Pursuant to its country to origin clause (Art. 3), the provision of such services is solely subject to regulation by the "home" Member State of the service provider, subject however to certain exceptions for instance for reasons of consumer protection. On the application of the e-Commerce Directive to financial services, see also the Commission's Communication of 7 February 2001, COM (2001) 66 final. The Directive was without prejudice to the level of protection for, in particular, consumer interests, as established in the Distance Marketing of Financial Services Directive.

<sup>157</sup> As outlined in Section 2, financial providers faced other institutional and technical barriers, as well as some problems in understanding or accessing the local domestic market. Addressing these, however, was not within the scope of the Directive.

<sup>158</sup> European Financial Services Round Table (2004). Consumer Protection and Consumer Choice. A fresh approach to breaking the deadlock.

<sup>159</sup> European Financial Services Round Table (2004). Consumer Protection and Consumer Choice. A fresh approach to breaking the deadlock.

<sup>160</sup> The terms and conditions related to the contract were not harmonised by the Directive, and thus suppliers still had to understand and comply with the national rules on this aspect.

<sup>161</sup> Berger, A. (2003). The efficiency effects of a single market for financial services in Europe. *European Journal of Operational Research*, 150, pp. 466-481.

<sup>162</sup> The potential gain from promoting a level playing field was expected to be greater in smaller countries with less choice of financial products. See European Financial Services Round Table (2004). Consumer Protection and Consumer Choice. A fresh approach to breaking the deadlock.



traditional providers) and new services/products. The lack of horizontal and technology-neutral legislation regulating the market meant that some of those new players and services/products were not subject to the same standards as traditional providers and services<sup>163</sup>. With the introduction of the Directive (which is horizontal and technology-neutral), the Commission intended to **limit unfair competition** from non-traditional providers (and non-traditional services/products) who could leverage their exemption from existing regulations to offer services/products at a lower cost.

Since the introduction of the Directive, **cross-border sales** of financial services/products **increased slightly but remained very limited** (as seen in Section 3). Nevertheless, 58% of the consulted consumer associations agree that “the Directive has lowered entry barriers for providers wanting to operate cross-border and fostered the distance market of financial service” and only 29% of the business association disagree with the statement<sup>164</sup>.

Cross-border competition can bring significant benefits<sup>165,166</sup> and so **the sub-objective to increase cross-border financial services remains relevant**. This, however, can only be fully achieved if other barriers are also removed. Digitalisation can contribute to reducing/eliminating some of those barriers (e.g. lower representation and operational costs). However, some barriers from both consumer and business’ side persist.

**15% of the respondents to the consumer survey** carried out for this evaluation claimed to have **purchased financial services from another Member States via distance means** or tried to do so. 32% of those that had not tried it yet would do it to find better deals<sup>167</sup>. The main reason indicated by respondents for not considering purchasing financial product at distance from another EU country was uncertainty about their rights or where to turn to get redress in case of a problem (35%), followed by the fact that they are satisfied with the services offered in their country (27%), that they prefer face-to-face contact (23%) and due to language barriers (15%)<sup>168</sup>.

There is, however, unmet demand: amongst those respondents to the consumer survey that tried to purchase financial services in another Member State (about 15%), nearly half were redirected to a website that was specific to the country where they live (29%) or they could not access the website (19%). Difficulties in accessing ‘foreign’ websites (e.g. because they are blocked or they redirect consumers to domestic or global website) or entering their residence<sup>169,170</sup> were also reported by consumers and a significant part of

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<sup>163</sup> Centre for European Policy Studies (2017). The Future of Retail Financial Services: What Policy Mix for a Balanced Digital Transformation? Report of a CEPS-ECRI Task Force.

<sup>164</sup> Of the remainder, 12% agree with the statement and 59% are neutral.

<sup>165</sup> Claessens, S. (2009). Competition in the financial sector: Overview of competition policies. *The World Bank Research Observer*, 24(1), pp. 83-118.

<sup>166</sup> European Commission (2015). Green Paper on retail financial services: Better products, more choice, and greater opportunities for consumers and businesses. COM(2015) 630 final and summary of contributions received. Available at: [https://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/summary-of-responses\\_en.pdf](https://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/summary-of-responses_en.pdf)

<sup>167</sup> Please note that there could be some limitations in the comparison between data used in the report, due to difference in the size of the sample and in the methodology between the consumer survey performed for the supporting study to the evaluation and data from the Eurobarometers.

<sup>168</sup> These figures echo those of Eurobarometer 446.

<sup>169</sup> See consumer survey and BEUC response to the Commission consultation on Green Paper on retail financial services. Available at: [https://www.beuc.eu/publications/beuc-x-2016-027\\_fal\\_beuc\\_position\\_green\\_paper\\_financial\\_services.pdf](https://www.beuc.eu/publications/beuc-x-2016-027_fal_beuc_position_green_paper_financial_services.pdf)

<sup>170</sup> Please note that Regulation (EU) 2018/302 banning geo-blocking does not apply to retail financial services.

the mystery shoppers (more than 25%). This suggests that there are barriers on the supply side that prevent financial providers from offering financial services/products cross-border. Those barriers include language barriers and lack of understanding of domestic retail financial services markets, which may limit the willingness to actively offer services cross-border in the absence of sufficient knowledge of the local markets, as well as different national relevant rules, including sector-specific legislation (e.g., regarding the terms and conditions related to the contracts, anti-money laundering requirements, notification requirements<sup>171</sup>, etc.), and different tax regimes, which may affect both active but also passive sales to unsolicited customers in other Member States.

The **creation of a level playing field** is seen as **increasingly relevant** by some of the industry stakeholders consulted, given the fast pace of digitalisation of the sector and the entrance of new players<sup>172</sup> (e.g. FinTechs), new services (e.g. peer-to-peer lending) and the use of new channels (e.g. mobile apps). The horizontal nature of the Directive and its (mostly) technology-neutral approach<sup>173</sup> ensure that a minimum set of rules applies to all current and future services and providers. This is considered relevant by more than 65% of the industry stakeholders consulted. This prevents unfair competition from providers exploiting legal loopholes due to a lack of product-specific legislation or legislation that would apply to certain technologies or distribution channels. Some industry stakeholders mentioned that a broader definition of ‘financial service’ could prevent certain financial providers from claiming that their services are exempt from the Directive.

## **EQ2. To which extent is the Directive relevant in light of legal developments that have occurred since its adoption?**

The evaluation finds that the relevance of the Directive has been decreasing in light of the introduction of product-specific and horizontal legislation that have occurred since its implementation. It represents however a safety net for all products (existing or to appear on the market) not covered by product-specific legislation.

The provisions on pre-contractual information are today mostly relevant for savings accounts, consumer credits below EUR 200 and above EUR 75,000 and personal pensions.

The provisions on the right of withdrawal are still relevant for payment accounts, savings accounts, consumer credits below EUR 200 and above EUR 75,000, mortgages in Member States that opted to give this right under the Directive and not the Mortgage Credit Directive, insurances covered by Article 6 and personal pensions.

The provision of the Directive on preventing unsolicited services as explicitly amended by the Unfair Commercial Practices Directive is still relevant. The provision on unsolicited communications has become irrelevant since it is covered extensively by other EU horizontal legislation.

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<sup>171</sup> In terms of the notification process and formal requirements to exercise the right of withdrawal, there are some differences between the national transposition of the Directive and product-specific legislation in several Member States.

<sup>172</sup> BIS (2019). Annual Economic Report III. Big tech in finance: opportunities and risks. Available at: <https://www.bis.org/publ/arpdf/ar2019e3.pdf>

<sup>173</sup> As mentioned before, some aspects of the Directive related to the definition of durable medium and Article 10 are not considered fully technology-neutral.

As a horizontal legislation setting rules for any service of banking, credit, insurance, personal pension, investment or payment nature sold at distance, no other single piece of legislation has a similar scope and objectives as the Directive. However the detailed analysis of the **interplay** between the Directive and key EU horizontal and product-specific legislation (see EQ11 and EQ12) **reveals significant overlaps**. This section analyses to what extent the Directive's specific objectives are already addressed by other EU legislation, and whether they are currently fully, partially or not relevant.

### ***Pre-contractual information***

The **relevance** of the provisions on pre-contractual information has been **significantly reduced** by the introduction of product-specific legislation that covers this aspect often more extensively than the Directive and in a way that is better adjusted to the service/product it regulates (see EQ12).

The relevance of the provision on pre-contractual information differs for **banking products** consisting of payment accounts<sup>174</sup> and savings accounts. For **payment accounts**, this objective was to some extent addressed by the Payment Services Directive (PSD I) since late 2009. Since 2016, it is now mostly addressed via the implementation of Payment Accounts Directive (PAD), which has more extensive requirements regarding pre-contractual information<sup>175</sup>. However, the PAD does not require the provision of information on the right of withdrawal. For **savings accounts**, the provisions on pre-contractual information set by the Directive are more extensive than the ones imposed by other EU legislation (i.e. Directive 2014/49/EU on deposit guarantee schemes). Therefore, for banking products sold at a distance the Directive's provisions on pre-contractual information are still partially relevant.

On **consumer credit**, this objective is mostly covered by the Consumer Credit Directive (CCD) since 2010. There are, however, important exceptions as some consumer credits fall outside the scope of the CCD in its current form, i.e., consumer credits below EUR 200 and above EUR 75,000. Therefore, the Directive's provision on pre-contractual information is still relevant for all consumer credits sold at distance not covered by the CCD<sup>176</sup>. This is the case in particular for pay-day loans (below EUR 200) which are usually sold through the internet or by phone. These are short term and unsecured loans that tend to be risky and the cause of high consumer detriment. Consequently, ensuring that consumers receive appropriate information about the products, supplier and contracts is of high relevance for this product. For **mortgages**, this objective was fully addressed by the Mortgage Credit Directive in 2016. Thus, the Directive is no longer relevant for mortgages in relation to consumer information.

On **insurances**, this objective was partially addressed by Solvency II in 2016, and in 2018 mostly addressed by the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) and by the Insurance Distribution Directive (IDD). Solvency II has pre-contractual information requirements for life insurance contracts that are to some extent similar to the Directive. PRIIPs contains very detailed pre-contractual information requirements that are more detailed

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<sup>174</sup> Means an account held in the name of one or more consumers which is used for the execution of payment transactions.

<sup>175</sup> For instance, provision of information on the most representative services linked to a payment account, and switching services.

<sup>176</sup> While the ECD Articles 5, 6 and 10 also cover the provision of pre-contractual information for these credits, the requirements are less extensive than the ones of the Directive.

than those under the Directive but only applies to packaged retail and insurance-based investment products. The IDD establishes similar pre-contractual information requirements as those foreseen under the Directive and adds some additional insurance-specific requirements and it is applicable to all insurance products. However, since PRIIPs and the IDD do not provide for a right of withdrawal, they do not require information disclosure on this aspect. Solvency II provides for a right of cancellation for life insurance contracts, which is less stringent than the right of withdrawal provided by the Directive. Consequently, the Directive's provision on pre-contractual information is still relevant for most insurances sold at distance to ensure that consumers receive information on their right of withdrawal, when applicable<sup>177</sup>.

For **personal pensions** sold at distance this objective is currently addressed by the Directive. However, as of 2020 it will be mostly addressed by the Pan-European personal pension product (PEPP)<sup>178</sup> as the pre-contractual information to be provided under the PEPP is very similar to that required under the Directive and in a few cases more stringent. Nevertheless, as the PEPP does not require information disclosure on the right of withdrawal (as it does not regulate this aspect of the contract), the Directive is still relevant to ensure that consumers of personal pensions receive information on their right of withdrawal, when applicable.

Regarding **investments**, the objective of informing consumers was to some extent already addressed by product-specific legislation even before the implementation of the Directive.<sup>179</sup> The implementation of the Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) in 2011, the Alternative Investment Fund Managers Directive (AIFM Directive) in 2013, the PRIIP, the Market in Financial Instruments Directive (MiFID) in 2017 and the Prospectus Regulation in 2019, contributed further to ensuring that investors receive adequate information about investment products. Thus, the relevance of the Directive's provisions on pre-contractual information is minor in the context of investment products sold at the distance.

On **payment services** this objective was mostly addressed by the PSD I and was fully addressed by the revised Payment Services Directive (PSD II). Thus, the Directive's provisions on pre-contractual information for payment services sold at distance are currently redundant in this respect.

### ***Right of withdrawal***

The introduction of product-specific legislation that regulates the right of withdrawal for some financial products/services had some impact on the relevance of this Directive's provisions.

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<sup>177</sup> Except travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration, since the right of withdrawal in the Directive does not apply to them.

<sup>178</sup> 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>179</sup> For instance by Directive 93/22/EEC on investment services, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS I), and Directive 89/298/EEC coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

In contrast with other financial services, regarding **banking products**, neither the Payment Accounts Directive (PAD) (2016) nor the Directive on deposit guarantee schemes include a right of withdrawal. Therefore, for banking products sold at distance, the Directive provision on the right of withdrawal remains relevant.

On **consumer credit**, this objective is mostly covered by the Consumer Credit Directive (CCD) since 2010. There are however important exceptions to the scope of the CCD, namely consumer credits below EUR 200 and above EUR 75,000. Therefore, the Directive's provisions on the right of withdrawal remain relevant for consumer credits sold at a distance not covered by the CCD in its current form<sup>180</sup>.

For **mortgages**, since 2016, this objective can either be achieved through the Directive or through the Mortgage Credit Directive (MCD), as in both cases the provision of this right is optional. In fact, the MCD leaves the choice to Member States to introduce either a period of reflection before the credit agreement is concluded or a period of withdrawal after the conclusion of the credit agreement, and supplements the Directive as regards the right of withdrawal. Thus, the Directive is to some extent relevant to ensure that consumers have an effective right of withdrawal from mortgage contracts sold at a distance.

On **insurances**, this objective is not addressed by the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) nor by the Insurance Distribution Directive (IDD). It is only partially addressed by the Solvency II Directive, as it provides a right of cancellation for life insurance contracts, which is less stringent than the right of withdrawal in the Directive. Thus, the Directive's right of withdrawal remains relevant for insurances covered by Article 6<sup>181</sup>.

For **personal pensions** sold at distance this objective is not addressed by the Pan-European personal pension product. Consequently, the Directive is still relevant to ensure that consumers of personal pensions have the right of withdrawal.

Regarding **investments**, the Directive excludes all financial services whose price depends on fluctuations in the financial market outside the supplier's control. Other relevant product-specific legislation does not regulate this aspect. Consequently, the Directive's provisions on the right of withdrawal are mostly not relevant in the context of investments.

On **payment services** this objective was mostly addressed by the Payment Services Directive (PSD I) and fully addressed by the entry into force of PSD II. Thus, the relevance of the Directive's provision on the right of withdrawal for payment services sold at distance is currently residual.

### ***Ban on unsolicited communications and services***

The relevance of the Directive on preventing consumers from receiving **unsolicited communications** has always been minimal, because the e-privacy Directive applied in 2003 already addressed this aspect for all financial services sold at a distance and the e-Commerce Directive included requirements specifically related to unsolicited commercial communication by email. The Unfair Commercial Practices Directive also

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<sup>180</sup> While the ECD Articles 5, 6 and 10 also cover the provision of pre-contractual information for these credits, the requirements are less extensive than the ones of the Directive.

<sup>181</sup> Except travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration, since the right of withdrawal in the Directive does not apply to them.



regulates this issue and the General Data Protection Regulation adopted in 2016 and applied in 2018 addressed it extensively (see support study Annex 8 *Legal research*).

The provision of the Directive on preventing **unsolicited services** as explicitly amended by the Unfair Commercial Practices Directive is still relevant. Additionally, PSD II fully addresses this objective in the context of payment services.

## EFFECTIVENESS

The assessment of effectiveness looks at the extent to which the Directive has succeeded in meeting its objectives.

### EQ3. To what extent have the objectives of the Directive been achieved?

The objective of contributing to better consumer protection and trust has been achieved to some extent, although issues of problematic/moderate level of compliance have been indicated. The majority of the stakeholders from all groups of stakeholders consider that the Directive contributed a) to increased consumer confidence, knowledge and understanding of the products purchased, by encouraging sufficient information disclosure prior to the conclusion of the contract and b) in helping consumers that changed their mind about the products they had bought to exercise their right of withdrawal. Since the introduction of the Directive, levels of consumer trust have increased, while the number of consumers experiencing problems - and those who have complained - has reduced for all financial services. The effectiveness of the Directive's provision on pre-contractual information has been somewhat hampered by the way the relevant information is provided to consumers.

The objective of single market consolidation has been achieved to a limited extent, as many barriers to cross-border services that are beyond the influence of the Directive remain in place (from both consumer and supply side).

This section analyses to what extent **the Directive's objectives** of increasing consumer protection and consolidating the single market have been achieved since the introduction of the Directive. These two objectives **are very broad and the limited number and scope of the Directive's provisions only allow for these to be met to a limited degree**. Consequently not all changes related to these two objectives described in this section can be attributed to the Directive.

The introduction of EU horizontal and product-specific legislation has reduced the relevance of the Directive (see EQ2) and significantly impacted what achievements can be attributed to the Directive as opposed to other EU legislation (see EQ4)<sup>182</sup>. Furthermore, the effectiveness of enforcement (see EQ5) and the level of compliance with the Directive (see EQ6) influence greatly the overall effectiveness of the Directive in achieving its objectives.

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<sup>182</sup> When asked the majority of stakeholders consulted in the context of the Open Public Consultation (60%, 9 respondents from business associations, 7 from public authorities, 6 from company/business organizations, 3 from consumer organizations and 1 EU citizen) reported that according to them, the benefits related to the key provisions of the Directive are mainly generated by the Directive, rather than by product-specific legislation. Only 23% of the respondents to the Open Public Consultation (5 respondents from public authorities, 3 from business associations, 1 from a company/business organization and 1 from a consumer organization) reported that according to them, the benefits specified are mainly derived from product/sector specific legislation rather than from the Directive.



**Overall**, around three quarters of the consulted consumer associations and two thirds of the consulted business associations are **satisfied with the Directive’s contribution to the development of the distance selling of financial services** both at the national and EU levels.<sup>183</sup> Only 8% (all consumer associations) indicated that they were not satisfied, mostly because of the overlaps and inconsistencies with the product-specific legislation. Some stakeholders reported that it was difficult to assess the Directive’s effectiveness, with one consumer association suggesting that the Directive should include indicators and define a process to monitor its effectiveness.

### **Objective 1: Consumer protection and trust**

Since the introduction of the Directive, levels of consumer trust have increased<sup>184</sup> while the number of consumers experiencing problems - and those who have complained - has reduced for all financial services covered by the Consumer Market Scoreboards between 2010 and 2017<sup>185</sup>. This might be due to the Directive and other EU legislation (See EQ4).

This is in line with the overall perception of the financial service providers, business associations, consumer associations<sup>186</sup> and national authorities consulted who all largely agreed that the Directive has contributed to increasing consumer protection. National authorities are particularly positive about the role of the Directive in protecting consumer rights, and how it has worked well in practice (more than 75%).

Various aspects of the Directive, notably the access to information (in particular about the provider), the right of withdrawal, the promotion of redress procedures and the right to consent (in the context of unsolicited communications and services) are judged by all groups of stakeholders to be important in preserving an appropriate level of consumer protection in distance (financial) transactions<sup>187</sup>. This level of protection is further heightened through complementary sector-specific legislation.

#### ***Provisions on pre-contractual information***

The Directive’s provisions on pre-contractual information were expected to result in “better informed purchases made by consumers” and contribute to achieving the specific objective of ensuring that consumers have better access to pre-contractual information.

The evidence shows diverse opinions on the effectiveness of information provision at the pre-contractual stage, but **overall** the majority<sup>188</sup> of the stakeholders from all groups of stakeholders **consider that the Directive contributed to increased consumer**

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<sup>183</sup> Stakeholders surveys and interviews.

<sup>184</sup> Data from the Consumer Markets Scoreboard show that the level of consumer trust in suppliers/providers to respect the rules and regulations protecting consumers has increased an average of 15% across the various financial services sectors between 2010 and 2017.

<sup>185</sup> Data from the Consumer Markets Scoreboard show that the level of number of consumers experiencing problems - and those who have complained – has decreased of an average of 8 percentage points across the various financial services sectors between 2010 and 2017.

<sup>186</sup> The feedback received during the surveys and interviews differed to the findings of the Open Public Consultation, as consumer associations that replied to Open Public Consultation were much less positive regarding this than the ones consulted in the context of surveys and interviews. While the majority of the consumer associations that replied to the Open Public Consultation considered the Directive not effective, more than 75% of the consumer associations consulted through surveys and interviews indicated that the Directive was effective in ensuring consumer protection in the long run. The number of consumer associations that replied to the Open Public Consultation is smaller than the number of the ones consulted through other means.

<sup>187</sup> Open Public Consultation and stakeholders’ surveys and interviews.

<sup>188</sup> A large majority of industry stakeholders consulted (above 80%) considers the Directive’s pre-contractual information requirements to be generally effective.

**confidence**, knowledge and understanding of the products purchased, by ensuring sufficient information disclosure prior to the conclusion of the contract.

More than three quarters of the **national authorities** consulted reported that the Directive's provisions on pre-contractual information were effective, with only 8% considering them ineffective. In particular, all considered the requirements to provide information on the provider and on the characteristics of the products and services effective.

**Consumer associations** are the group with **less positive** views on the effectiveness of the pre-contractual information, with only 54% agreeing that they have been effective (however only 8% disagreed while 38% were neutral)<sup>189</sup>. These views are mostly related to the fact that providers do not always comply with these requirements and also because of problems experienced by consumers in fully reading and understanding the information they receive (probably due to limited financial literacy but also consumer bias sometimes exploited by financial providers and poor practices regarding presentation of information).

This is to some extent **in line with the results of the mystery shopping** exercise. Overall, 7% of the mystery shoppers considered the amount and quality of information poor and 11% fair. The mystery shoppers using smartphone apps were the ones with the worst experience<sup>190</sup> while the ones purchasing through a phone call were the ones with the best experience, as none reported that the information received was poor. At the same time, mystery shoppers found that the amount of information and its quality was better in the case of purchases with traditional providers. This assessment is also confirmed by results from the consumer survey, with 33% of consumers mentioning that they had received unclear, difficult to understand and badly-structured information; around 20% of consumers indicated that they did not obtain adequate information about whether redress was available and about the existence of a right of withdrawal. In addition, 18% of the consumers surveyed found that the information was not provided sufficiently in advance to give them time to review it and 13% of the surveyed consumers pointed out that the information was not adapted to the device used.

These findings reveal some shortcomings as to the effectiveness of the Directive's pre-contractual information rules: even if provided to the consumers, its length, timing, format and suitability for the device used has an impact on whether it is helpful to consumers<sup>191,192</sup>. This echoes the findings of EQ1 and behavioural insights. While the Directive regulates that the information should be '*provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used*', the absence of guidance on how exactly this should be implemented may have reduced the effectiveness of this provision, in particular where providers have exploited these framing biases. Beyond the scope of the Directive, low levels of financial literacy remain an obstacle to the effectiveness of the Directive's information disclosure rules.

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<sup>189</sup> Based on data from the Open Public Consultation, the requirements on information to be provided over the phone and about the characteristics of the products and conditions were considered by about 60% as somewhat ineffective.

<sup>190</sup> Facing difficulties to find and understand the information.

<sup>191</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>192</sup> EBA Opinion on disclosure to consumers buying financial services through digital channels, 2019.

### *Provisions on the right of withdrawal*

The Directive's provisions on right of withdrawal were expected to ensure that consumers that entered into a contract due to an ill-considered or rushed decision could effectively cancel the contract. The right of withdrawal is widely accepted as an important safeguard of consumers' interests in distance transactions.

The majority of consumers (about 80% of the respondents of the consumer survey and about 60% of the mystery shoppers) were duly advised of their right to cancel a contract, including the timeframe within which they can exercise this right and, if applicable, the costs they were likely to incur if they chose to do so.<sup>193</sup>

**Most of stakeholders** consulted (80% of the Open Public Consultation respondents and of survey respondents) **considered the right of withdrawal effective** in helping consumers that change their mind about the products they have bought. National authorities are the group with the highest percentage of respondents that considered this provision effective (around 83%), followed by industry stakeholders (around 80%). Consumer associations had, however, some divergent views about this (70% of the consumer associations consulted outside the Open Public Consultation considered it effective while only 50% of those that responded to the Open Public Consultation indicated that the provision was effective). These less positive views are explained by the fact that some consumer associations consider that consumers are not properly informed of the existence of the right of withdrawal and face obstacles exercising it.

In agreement with the views of consumer associations, some EU and national authorities indicated that some financial services providers impose a burdensome withdrawal process on consumers, which may hinder the effectiveness of this provision.<sup>194</sup>

However, some behavioural studies<sup>195</sup> suggest that the way in which the right of withdrawal has been implemented in the Directive might not be the most effective in addressing the risk of consumers being trapped in unsatisfactory contracts. Consumer associations and some national authorities thus suggested additional mechanisms (such as prompts to remind consumers of the right of withdrawal deadline) to ensure consumers can make effective use of this right or the introduction of a cooling-off period before signing the contract as an alternative.

### *Provisions on banning unsolicited communications and services*

The Directive's provisions on unsolicited communications and services were expected to have as a result that consumers are protected against these practices. The evidence suggests that these types of **practices have been effectively curbed in recent years**<sup>196</sup>.

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<sup>193</sup> As mentioned previously even if consumers receive information it does not mean they are fully aware of it. For example, 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 to be low, though it varies substantially by market segment<sup>193</sup>. 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% believing they will not be refunded if they choose to withdraw from a contract, and 18% believing they do not have the right to cancel a contract at all. See Special Eurobarometer 2011 342.

<sup>194</sup> The EBA in its Opinion on disclosure to consumers buying financial services through digital channels, 2019, recommends to simplify the process and make it less burdensome.

<sup>195</sup> Tscherner, E. (2014). Can behavioral research advance mandatory law, information duties, standard terms and withdrawal rights? pp.144-155.

<sup>196</sup> Stakeholder surveys and interviews.

Most of consumers surveyed (68%) indicated that they did not receive unsolicited communications about retail financial services without giving their prior agreement and 97% reported that they never had problems with unsolicited services.

However, as shown in EQ2 and EQ4 those achievements **may not be entirely attributable to the Directive** due to overlapping with EU horizontal legislation.

Nevertheless, **a majority of the stakeholders consulted considered that the Directive contributed to protect consumers** against unsolicited communications and services to some extent. By contrast, consumer associations consulted in the Open Public Consultation tended to consider these provisions of the Directive (62.5%) ineffective, mostly due to overlaps with other legislation, while 60% of consumer associations consulted outside the Open Public Consultation considered that they were effective. All stakeholders considered the provision on unsolicited services to be more effective than the provision on unsolicited communications.

Stakeholders agreed that the current ban on unsolicited communication and services could be made more effective if: (1) it explicitly banned some current practices used by providers (e.g. pre-ticked boxes)<sup>197</sup>; (2) it was enforced more rigorously and breaches were punished more severely<sup>198</sup>, increasing the effectiveness of the ban by deterring non-compliance and increasing detection.

## **Objective 2: Consolidation of the single market**

The Directive was expected to achieve the objective of contributing to consolidate the single market by providing a common set of rules applicable to all distance sales of financial services in all EU countries, independently of the type of service/product and of the type of communication means used.

Overall, more than half of the consulted stakeholders considered that the Directive did contribute to increasing the level of harmonisation or convergence between national legislation (35% neither agreed nor disagreed). The opinions among the three groups of stakeholders vary<sup>199</sup>, though. Some mentioned that the possibility of regulatory choices allowed in the Directive led to discrepancies between national legislation.

More than 70% of the stakeholders from all groups considered that the **horizontal scope** of the Directive had been effective (with all national authorities and consumer associations agreeing). On the other hand, only a small majority of the stakeholders consulted agreed that the technology-neutral approach was effective, with opinions among the stakeholders diverging<sup>200</sup>.

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<sup>197</sup> See EBA Opinion on disclosure to consumers buying financial services through digital channels, 2019.

<sup>198</sup> Stakeholder surveys and interviews; Open Public Consultation undertaken in collaboration with DG JUST.

<sup>199</sup> National authorities consulted mostly (about 80%) agreed that the Directive had a positive effect on the level of harmonisation of national laws, while only 40% of the business providers and consumer associations thought the same. 29% and 24% of business associations and consumer associations respectively, considered that the Directive had no effect on the convergence of national law on distance marketing of financial services. Also in general consumer associations and business associations and providers to that responded to the Open Public Consultation had less positive views than the ones consulted outside the Open Public Consultation. One explanation might be that in the Open Public Consultation stakeholders did not have the option of stating that they were neutral while in the other consultation they did.

<sup>200</sup> The majority of the business providers and national authorities consulted considered that this aspect of the Directive was effective, while the majority of consumer associations and business associations considered it somewhat ineffective (mostly due to the introduction of product-specific legislation, which on

### *Impact on cross-border market*

Since the implementation of the Directive in 2002, the **proportion of sales** (in the financial sector) **conducted via distance channels has grown rapidly**<sup>201</sup>. While the share of cross-border sales has been increasing slowly, it is reasonable to assume that most of those sales are carried out over the internet<sup>202</sup>. This is in line with the results of the consumer survey that show that on average **about 25% of the services purchased at distance** in the last five years from the respondents **were from a provider located in another Member States**. There are however slight differences between product types, with payment accounts, payment services, credit cards, car insurances and investments being the ones where cross-border sales are more prominent.

Stakeholders have **divergent views** on the extent to which the Directive contributed to increasing cross-border distance sales of financial services. The majority of national authorities tended to agree that it had a positive contribution, while more than half of the industry stakeholders<sup>203</sup> and consumer association neither agreed nor disagreed.

The slow uptake of cross-border financial sales indicates that while the Directive may have provided a basis for furthering the Union's efforts in promoting the cross-border distribution of financial services<sup>204</sup>, there are **inherent barriers to the development of an integrated financial market** which are beyond the influence of the Directive. Such barriers arise from both sides: consumers and business.

On the demand-side they include perception, emotional, cultural and language barriers, such as consumer preferences for domestic products, informational friction and a lack of trust or confidence<sup>205</sup>. These barriers are still very much the same as those existing in the baseline (see Section 2). As explained under EQ1, there is however an increasing demand for cross-border financial services that is often unmet<sup>206</sup> due to limitations of offers to domestic customers.

Indeed, from the supply side, industry stakeholders tend to focus on the domestic market because of existing barriers preventing them from offering services across borders. These

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the hand reduced the relevance of the Directive and on the other hand introduced different rules for different product types).

<sup>201</sup> Civic Consulting of the Consumer Policy Evaluation Consortium (2008). Analysis of the Economic Impact of Directive 2002/65/EC concerning the distance marketing of consumer financial services on the conclusion of cross-border contracts for financial services between suppliers and consumers within the Internal Market.

<sup>202</sup> Increasing digitalisation and globalisation together with European Union initiatives to promote cross-border payments (e.g., arrival SEPA) and sales will contribute to increase cross-border sales of financial services in the near future.

<sup>203</sup> Different approaches adopted by EU Member States in their transposition of the Directive is considered by industry stakeholders as a factor that reduced the effectiveness of the Directive in contributing to achieve harmonisation/convergence between national legislation on financial services

<sup>204</sup> Stakeholder interviews.

<sup>205</sup> Of the consumers surveyed (Open Public Consultation and consumer survey) only 17% had already tried to purchase financial services cross-border but 33% would consider it to find better deals. The remainder half of the consumers would not do it for various reasons, including unsureness about their rights (38%) and language barriers (12%).

<sup>206</sup> Indeed, of those surveyed consumers that have tried to purchase online, a limited share (15%) indicated that they were satisfied with the results. 29% tried but were redirected to another website (in the case of mystery shoppers it happened in 22% of the cases), 11% indicated that the website was blocked (8% of the mystery shoppers reported a similar experience) and 3% did not manage to complete the transaction (that happened to 6% of the mystery shoppers).



are very much similar to those at the baseline (different tax regimes and legal/regulatory fragmentation, preference to serve the local market<sup>207</sup>, language issues, etc.).

On the other hand, two aspects beyond the Directive's provisions may positively impact the development of the cross-border market for financial services. First, the **digitalisation** of financial services could lead to a reduction of certain costs and supply-side barriers. Many FinTechs, for instance, are operating cross-border. Second, the **introduction of other EU horizontal and product-specific legislation**, by introducing further harmonization within the EU, may help to address more specifically existing legal barriers to the cross-border provision of financial services.

### ***Level-playing field***

Evidence gathered from the desk review and stakeholder consultation<sup>208</sup> indicates that the **Directive was effective in creating a level playing field and still is**, although to a lesser extent due to the implementation of product-specific legislation. This is because the Directive provides a minimum set of rules that all financial providers must follow, independently of the type of financial products they sell or the distance means of communication they use. In particular, traditional providers – amid concerns of possible legal loopholes that could lead to unfair competition from unconventional providers (e.g. FinTechs) and services – consider this a significant benefit of the Directive. The level playing field at EU level could be improved by setting more detailed requirements which would reduce the margin of transposition of Member States and ensure a more consistent enforcement (see EQ5).

About half of the stakeholders consulted considered that the Directive contributed to increased competition and increased the choice of financial services.

### **EQ4. To what extent can the achievements be attributed to the adoption and implementation of the Directive?**

Due to the introduction of other EU legislation since 2004, current achievements in consumer protection and level playing field can be attributed to the Directive only to a limited extent and have decreased over time.

Achievements in the context of the right of withdrawal can be mostly attributed to the Directive for most of the products, except credits between EUR 200 and 75,000, as well as some mortgages, and payment services. Achievements in the context of pre-contractual information are partially attributable to product-specific legislation. Achievements in the context of unsolicited communications and services are mostly non-attributable to the Directive due to horizontal legislation.

As specified in EQ2 and EQ12, legislation adopted after the implementation of the Directive addresses some or all specific objectives of the Directive. Consequently, while at the time of the implementation of the Directive, the improvements in consumer protection and level playing field were mostly attributable to the Directive itself, the **achievements** related to the key objectives of the Directive **have decreased over time** and for most traditional financial services.

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<sup>207</sup> European Commission (2015). Green Paper on retail financial services.

<sup>208</sup> More than 80% of the stakeholders consulted agreed that the Directive had contributed to creating a level playing field.



### *Pre-contractual information*

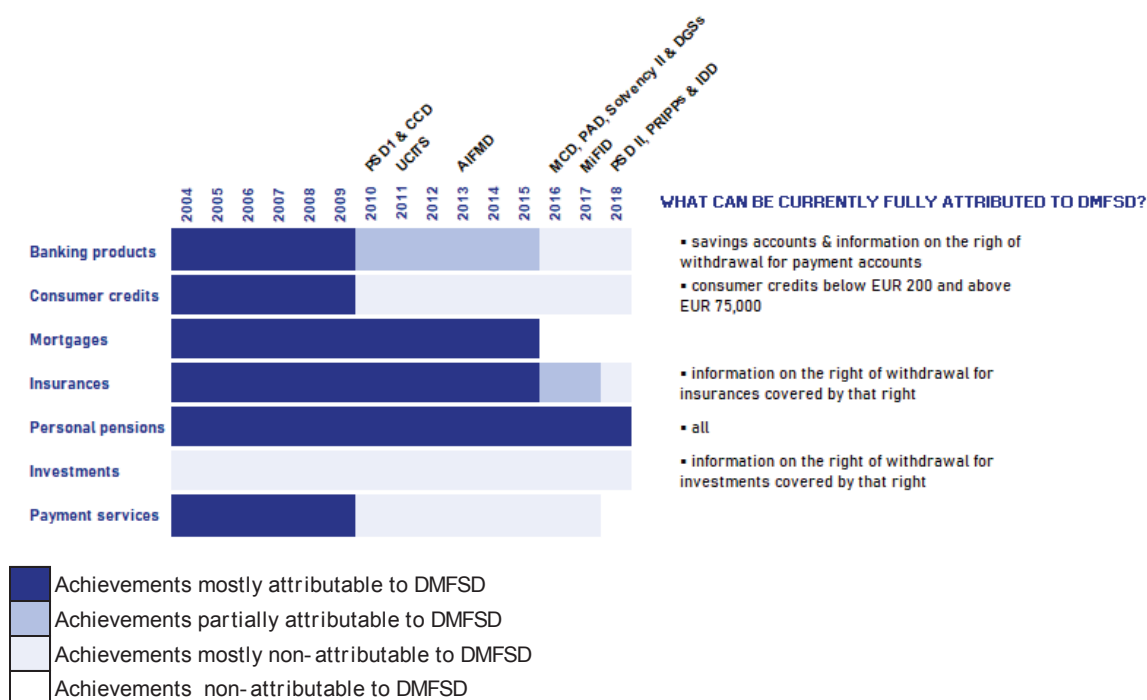
The achievements related to the provision of pre-contractual information that can be attributable to the Directive **vary in time and per type of financial product**.

When the Directive was implemented **only 11 Member States had legislation partially covering** this aspect and the little EU legislation in place regulating pre-contractual information did not impose requirements as stringent as the provisions in the Directive (except the ones on investments). The achievements related to pre-contractual information could therefore be attributable to Directive for most financial products. Some pre-contractual information requirements were included in sectoral legislation at the time of the Directive negotiations, for instance for investments, and to a limited extent for consumer credit and insurances. This situation remained until the implementation of product-specific legislations in late 2009 and beginning of 2010, i.e., the Payment Services Directive (PSD I) and the Consumer Credit Directive (CCD). Since then, the achievements that can be attributed to Article 3, 4 and 5 of the Directive kept declining with the introduction of other product-specific legislation regulating pre-contractual information.

The achievements attributable to the Directive that relate to the provision of pre-contractual information **evolved as follows** (see Figure 6):

- Banking products: displaced to PSD I in late 2009 and to the Payment Accounts Directive (PAD) in 2016 for payment accounts, and slightly reduced for savings accounts with the introduction of the Directive on deposit guarantee schemes in 2016 (as the Directive's provisions on pre-contractual information are generally more stringent);
- Consumer credit: displaced to the CCD in 2010 for credits above EUR 200 and below EUR 75,000 and remained the same for consumer credits below EUR 200 and above 75,000 since the implementation of the Directive;
- Mortgages: displaced to the Mortgage Credit Directive (MCD) in 2016;
- Insurances: partially reduced with the Solvency II (which sets information requirements for life insurance contracts similar to the ones set by the Directive) in 2016 and significantly reduced in 2018 with the for packaged retail and insurance-based investment products (PRIIPs Regulation) and the Insurance Distribution Directive (IDD) (which do not cover information of the right of withdrawal);
- Personal pensions: remained the same since the implementation of Directive;
- Investments: remained low since the introduction of the Directive;
- Payment services: significantly reduced with the PSD I in late 2009 and then displaced to the PSD II in 2018.

Figure 6. *Overview of the evolution of the attribution of achievements related to the provision of pre-contractual information*



Source: ICF elaboration

### **Right of withdrawal**

As with pre-contractual information, the achievements related to the provision of the right of withdrawal that can be attributed to the Directive vary in time and per type of financial product.

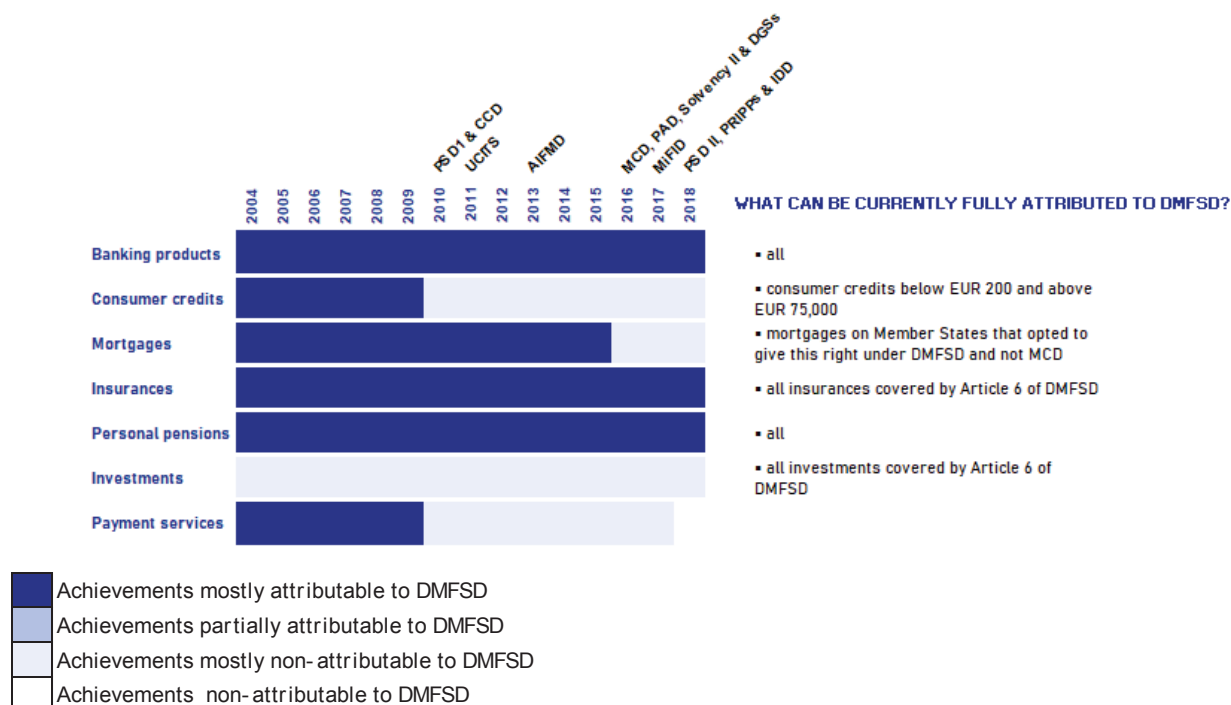
When the Directive was implemented, only **nine Member States had legislation** covering this aspect. All achievements related to the right of withdrawal could therefore be attributed to the Directive for all financial products covered by this right. This situation remained until the implementation of the first key product-specific legislation in late 2009 and beginning of 2010, i.e., the Payment Services Directive (PSD I) and the Consumer Credit Directive (CCD). Since then, the achievements that can be attributed to Article 6 and 7 of the Directive declined with the introduction of other product-specific legislation regulating the right of withdrawal.

The achievements attributable to the Directive that relate to the provision of the right of withdrawal **evolved as follows** (see Figure 7 7):

- Banking products: remained the same since the implementation of the Directive;
- Consumer credit: disappeared in 2010 for credits above EUR 200 and below EUR 75,000 and remained the same for consumer credits below EUR 200 and above 75,000 since the implementation of the Directive;
- Mortgages: significantly reduced in 2016 with the implementation of the Mortgage Credit Directive (MCD);
- Insurances: remained the same since the implementation of the Directive for all insurances except the ones for which this right does not apply, namely travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration (while Solvency II provides for the right of cancellation, the Directive right of withdrawal is more stringent);
- Personal pensions: remained the same since the implementation of the Directive;

- Investments: remained low since the introduction of the Directive;
- Payment services: significantly reduced with the PSD I in late 2009 and disappeared in 2018 with PSD II.

Figure 7. *Overview of the evolution of the attribution of achievements related to the provision of right of withdrawal*



Source: ICF elaboration

### **Unsolicited communications and services**

Since the implementation of the Directive, the achievements related to the ban on unsolicited communications are attributable to the e-privacy Directive (implemented in 2003), the e-Commerce Directive (implemented in 2002) as regards unsolicited commercial communication by email and to some extent to the Unfair Commercial Practices Directive (UCPD) which regulates this issue and not to the Directive. The General Data Protection Regulation adopted in 2016 also addressed it extensively.

On the other hand, the achievements related to the ban on unsolicited services can be fully attributed to the Directive until 2007. As of 2007, the Unfair Commercial Practices Directive (UCPD) which prohibits inertia selling practices (i.e. requesting payment for unsolicited goods or services) amended Article 9 of the Directive. Article 9 of the Directive now contains a reference to the UCPD and an obligation on Member States to provide that consumers subject to inertia selling are exempt from any obligation to pay and that the absence of a response must not constitute consent. Therefore, the attribution of the achievements were mostly displaced to the UCPD for all financial products. The General Data Protection Regulation also complements the content of the Directive by defining “consent” in the context of personal data processing (Article 4) and by establishing the conditions for giving consent (Article 7). In 2018, the achievements for payment services related to this provision were fully displaced to the PSD II.

### ***Impacts on the consolidation of the internal market***

The achievements of the Directive on the consolidation of the internal market are somewhat limited. As explained in EQ3, there are still barriers to the cross-border provision of retail financial services and the Directive only addressed some of them by harmonizing a series of key rights for consumers. However, this limited impact has further decreased through time as other new legislation has harmonized in more detail the rules applicable to specific product categories, while digitalisation can also be considered to have reduced certain barriers faced by providers wanting to operate cross-border.

#### **EQ5. To what extent have Member States implemented and enforced the Directive?**

All Member States have implemented and are enforcing the Directive. They have also put in place redress mechanisms for consumers.

However, the variety in the enforcement landscape across Member States, with very different types and magnitudes of sanctions and remedies available to consumers depending on the country, point to a *de facto* different level of consumer protection across the EU. This could also negatively affect the level-playing field between providers, as those located in countries with a more lenient enforcement regime could have an advantage over their competitors based in other countries.

As shown in EQ6, there is also a certain lack of compliance (notably in relation to information disclosure and the right of withdrawal), which would point to the need to step-up enforcement of the Directive.

### ***Enforcement structures***

The majority of Member States gave the mandate to enforce the rights and obligations contained in the Directive to a limited number of enforcement authorities<sup>209</sup>, while four Member States<sup>210</sup> invested several bodies with responsibility for compliance with the Directive.

These bodies mostly take the form of financial supervisory authorities, consumer protection bodies or national banks<sup>211</sup>. 14 Member States<sup>212</sup> have a financial supervisory authority that is responsible for ensuring compliance with the Directive. In 10 Member States<sup>213</sup>, the consumer protection bodies monitor the provisions of the Directive. Italy, Portugal, Spain and the UK<sup>214</sup> have appointed several bodies<sup>215</sup> for ensuring correct implementation of the Directive. Lithuania, Romania and Slovakia have entrusted the

<sup>209</sup> One/two authorities involved: AT, BE, BG, HR, CY, EE, FI, FR, DE, EL, IE, LV, LT, PL, RO, SI, SE.

<sup>210</sup> ES, IT, PT, UK

<sup>211</sup> A bank is considered 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>212</sup> AT, BE, DK, DE, EE, ES, IT, MT, LU, NL, PL, SI, SE, UK.

<sup>213</sup> BG, CY, DK, HU, IE, LU, NL, RO, SE.

<sup>214</sup> The United Kingdom withdrew from the European Union as of 1 February 2020. During the transition period, which ends on 31 December 2020, Union law, with a few limited exceptions, continues to be applicable to and in the United Kingdom and any reference to Member States in Union law shall be understood as including the United Kingdom.

<sup>215</sup> Italy, for instance, made a distinction based on the financial service provided. More specifically, the Bank of Italy is responsible for banking, credit and payment services, the Institute for the Supervision of Insurance ensures the application of the relevant guarantees in the field of insurance, and the Italian Competition Authority deals with unfair commercial practices and unfair terms.

enforcement of the Directive to national banks, while other Member States foresee the banks' involvement in liaison with other relevant authorities<sup>216</sup>.

Article 11 of the Directive requires Member States to set out appropriate and effective **sanctions** in cases where the supplier fails to comply with the provisions foreseen under the Directive. All Member States transposed this Article, with the exception of Finland, which considered its existing systems for supervision and sanctions to already fulfil the requirements of the Article<sup>217</sup>.

The evaluation found that the majority of Member States apply civil and administrative sanctions, with **only 11 Member States**<sup>218</sup> providing for **criminal sanctions**. These usually take the form of monetary penalties and, to a minimal extent, imprisonment. For instance in Finland, an individual or a legal entity that provides false or misleading information in connection with the marketing of financial services can be fined or individuals sentenced to up to one year in prison.

**Some Member States**, such as Austria, Ireland and the UK, punish the infringement of consumer protection provisions (usually combined with other remedies) with **civil legal sanctions** (e.g. injunctive relief)<sup>219</sup>.

**Almost all Member States** apply **administrative sanctions**, which usually take the form of monetary fines. Different amounts are applicable for natural and legal persons, with higher fines typically applying to the latter. The range of pecuniary fines for both natural and legal persons is extensive<sup>220</sup>, ranging from EUR 26 to 25,000 in Belgium,<sup>221</sup> to up to EUR 5 million<sup>222</sup> in the Netherlands.

Member States can also take **other measures to ensure the enforcement** of the Directive, with the most common being: time-limited or permanent suspension of creditors in the case of frequent offences<sup>223</sup>; nullification or voiding of the contract or the infringing clause(s); and restriction of the creditor's business activities<sup>224</sup>. Some Member States<sup>225</sup> also grant a right of compensation for eventual damage caused by non-compliance with the information obligation, or by the relevant professional misconduct.

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<sup>216</sup> CZ, ES, HU, HR, NL, PT, SI.

<sup>217</sup> The Finnish Consumer Protection Ombudsman, the Financial Supervisory Authority oversee compliance with the Directive transposing measures.

<sup>218</sup> BE, EE, FI, FR, HR, IE, LV, NL, PL, SK, UK.

<sup>219</sup> In Austria, this is a collective action that aims to condemn a violation of the law by an entrepreneur. The most significant legal consequence of the breach of information obligations in Austria concern cases where the withdrawal period does not begin until the entrepreneur has fulfilled his obligation to transmit the contractual conditions and sales information. As long as the obligation is not respected, the consumer can withdraw from the contract without stating reasons. Similarly, in Germany: *the withdrawal period does not start to run before correct withdrawal information has been given* (Article 356 BGB).

<sup>220</sup> In some Member States, the fines imposed on creditors are linked to their annual turnover, with Latvia defining that a fine cannot exceed 10% of the creditor's annual income and EUR 100 000<sup>220</sup> for unfair commercial practices, while in Lithuania it is limited to 3%. While in Slovakia the amount of the fine can be up to twelve-times of the monthly average income of the fined person, depending on the gravity, duration of the breach, degree of culpability, nature of the violation.

<sup>221</sup> An infringement of the rules on distance selling of financial products in bad faith is sanctioned with a penalty of EUR 26-25,000 (Article XV.84 CEL juncto, Article XV.70 CEL (previously Article 125 AMPCP and Article 103 ACPCP)).

<sup>222</sup> Adjusted for price level value: 4.4 million EUR.

<sup>223</sup> EL, ES, LU, LV, SK.

<sup>224</sup> LV, LU.

<sup>225</sup> AT, BE, IT, PL.



### ***Redress and remedies***

Article 14 of the Directive aims to ensure that Member States set up or develop adequate and effective out-of-court complaints and redress procedures to settle consumer disputes on distance financial services.

The majority of Member States have several mechanisms in place for out-of-court and redress procedures and these mostly take the form of arbitration, mediation and conciliation. Several Member States<sup>226</sup> appointed an Ombudsman that further fulfil the role of a complaints mechanism for consumers.

27% of the National Authorities consulted reported they are aware of cases where consumers made use of appeal options when they did not feel adequately protected. Of those, 86% identified the judicial measures as the first channel used by consumers to restore the prejudiced right of the consumers, 71% ombudspersons and consumer associations, followed by complaints bodies (64%) and mediation (29%).

However, in most cases<sup>227</sup>, consumers first seek redress by complaining directly to the provider. This is followed by resorting to third parties, including consumer associations, intermediaries, ombudsmen and finally more direct forms of complaints, such as alternative dispute resolution or through legal proceedings.

The consumer is able to pursue **remedies** against the creditor when there are compliance issues. The extent and type, however, are determined by Member States<sup>228</sup>. The likelihood of consumers needing or requesting to pursue remedies depends on the scale of the problems they encounter. Based on the estimated share of non-compliance (see EQ6), it means that issues most likely relate to areas where they could not exercise their right, in particular the right to withdrawal, or not having received all or sufficient information.

### ***Effectiveness of enforcement and redress***

Conducting regular controls, planning supervisory activities and imposing dissuasive sanctions, are the key tools identified by National Authorities<sup>229</sup> to enforce the Directive.

There are a number of limitations to the assessment of the effectiveness of enforcement of the Directive. Firstly, Member States do not distinguish enforcement approaches by legislation (Directive, sector-specific legislation) but rather on the basis of specific responsibilities they have. Secondly, the evaluation did not obtain relevant data on enforcement directly, nor on complaints registered.

The assessment of the effectiveness of enforcement and redress mechanisms is mostly based on the perception among consumers of the issues they may have faced in relation to the Directive's provisions. On the basis of the consumer survey and feedback from consumer organisations, this evaluation identifies some issues in this area. For instance, 69% of the consumer associations consulted reported to have received complaints from consumers concerning their right of withdrawal. Specifically, complaints concerned the lack of awareness of consumers about the possibility of benefit from the mentioned right

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<sup>226</sup> BE, FI, IE, IT, PT, UK.

<sup>227</sup> Special Eurobarometer 373, Retail Financial Services (2011), pp. 100.

<sup>228</sup> For instance, in Italy, the contract is declared null if the supplier (i) impedes the consumer from exercising the right of withdrawal, (ii) does not return to the consumer any received sums or (iii) infringes prior information duties. These provisions do not prejudice the right of the consumer to claim for damages.

<sup>229</sup> National Authority survey results.

at the moment of the purchase, the refusal by the provider to accept the withdrawal and consumers experienced bureaucratic difficulties faced while exercising their right.

In addition, among the consumers consulted through the surveys, 2% experienced problems with a financial service they had contracted in the past 5 years. For 50% of these respondents, the issue has been closed without being resolved, and 25% are still waiting for its resolution.

This evaluation finds that the majority<sup>230</sup> of the authorities surveyed indicated that consumers, in their respective countries, are adequately protected in case of non-compliance with the Directive, while 21% believed that consumers are protected only to some extent.

Overall, the scarce evidence available seems to suggest that consumers do not always obtain redress when their rights under the Directive have not been respected. The evaluation cannot however conclude on the reasons behind given the limited data at hand. However, the **variety in the enforcement landscape across Member States**, with very different types and magnitudes of sanctions and remedies available to consumers depending on the country<sup>231</sup>, **points to a *de facto* different level of consumer protection** across the EU. This could also negatively impact the level-playing between providers, as those located in countries with a more lenient enforcement regime could have an advantage over their competitors based in other countries. As shown in EQ6, there is also a certain lack of compliance (notably in relation to information disclosure and the right of withdrawal), which would point to the need to step-up enforcement of the Directive.

The recently adopted Directive (EU) 2019/2161 on better enforcement and modernisation of EU consumer protection, part of the New Deal for Consumers, amends the Unfair Contract Terms Directive, the Unfair Commercial Practices Directive and the Consumer Rights Directive. The latter, however, does not apply to financial services. As such, the rules on better enforcement and modernisation of EU consumer protection do not directly affect the functioning of the Directive. However, new provisions inserted in the Unfair Contract Terms Directive and Unfair Commercial Practices Directive strengthen the rules on penalties, especially for cross-border cases. In the future, Member States will also have to provide consumers who have been harmed by unfair commercial practices, such as misleading or aggressive marketing, with a right to individual remedies.

#### **EQ6. To what extent have financial service providers complied with the Directive?**

Data suggests a reasonable level of compliance with the key provisions of the Directive. The compliance levels are not the same for all provisions, though. While the level of compliance with the provision on unsolicited services is considered very high, the compliance levels with the right of withdrawal are moderate-high, and only moderate when it comes to pre-contractual information and unsolicited communication.

This section analyses the compliance of financial providers with the key provisions of the Directive. It is important to highlight however that wherever there are overlaps between the Directive and other EU legislation, it is not possible to determine whether the providers complied intentionally or not with the Directive.

<sup>230</sup> *Would you say that consumers in your country are sufficiently protected in cases of non-compliance with the DMFSD?* 64% yes, 21% to some extent, 11% don't know, 4% no.

<sup>231</sup> There are substantial differences between Member States in enforcement effectiveness, which are due to a combination of factors including the mandate of responsible authorities, likelihood of non-compliance being detected and followed up on, the breadth of sanctions, and resources available at Member State level.

The prevailing view among financial service providers, business associations and national authorities that the **obligations set out by the Directive are generally reasonably well met**<sup>232</sup>. In particular, respondents in the latter two groups have reported compliance levels to be ‘high’ or ‘very high’ across Member States.

The interplay between the Directive and other (EU and/or national) legislation could explain a certain degree of the satisfactory compliance levels<sup>233</sup> in particular regarding the provision of pre-contractual information and unsolicited communications and services where there are the most overlaps between the Directive and other EU legislation.

There is, however, **some indication of compliance failings**. Almost 70% of the national authorities consulted mentioned that they have received complaints in the context of the provision of pre-contractual information and right of withdrawal (mostly related to insurances, credits and investments). The extent and reasons for their occurrence are not sufficiently understood, although compliance costs<sup>234</sup> and legal uncertainty may constitute important drivers of such non-compliant behaviour<sup>235</sup>. The provision of pre-contractual information imposes some recurrent costs and contributes to more informed decisions (which might go against the interest of some financial providers). Similarly, the right of withdrawal imposes some costs with processing the withdrawal request and cancelling the contract and goes to some extent against the immediate private interest of the financial providers (as generally, their objective is to have as many sales as possible).

A lack of legal certainty has been attributed to lack of clarity of some definitions of the Directive (see EQ1), differences in the transposition of the Directive across Member States, as well as various overlaps and inconsistencies between the Directive and other EU legislation<sup>236</sup> (see EQ12). This lack of clarity on which rules apply, and the exact meaning of those rules, may have contributed to financial providers unwittingly failing to comply with the Directive.

### ***Compliance with the provision on pre-contractual information***

The level of compliance in providing the pre-contractual information required by the Directive in good time appears to be **moderate** based on the evidence gathered in the study through the Open Public Consultation, consumer survey and mystery shopping complemented with the views of the consumer associations and national authorities consulted.

Overall, 58% of the national authorities consulted consider that providers comply with the information requirements (with only 14% disagreeing with the statement). When asked about whether they agreed that consumers are provided with comprehensive and correct information at pre-contractual stage, more than 60% of the national authorities agreed (with 25% not agreeing nor disagreeing), while only one third of the consumer

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<sup>232</sup> Surveys and interviews with relevant stakeholders.

<sup>233</sup> Interviews with relevant stakeholders.

<sup>234</sup> The magnitude of compliance costs can also have important implications for adherence levels among regulated parties. The higher the costs, the more likely that providers may not be willing and/or able to comply with the necessary legislative requirements.

<sup>235</sup> Desk research and surveys/interviews with financial service providers, business associations, and national authorities.

<sup>236</sup> Desk research and surveys/interviews with financial service providers, business associations, and national authorities.

associations agreed (one remaining third disagreed, while the other third stated that they did not agree nor disagree).

The compliance with the pre-contractual information varies with the type of information that needs to be provided (about the service/product, the supplier, terms and conditions).

Regarding the data on the **characteristics of the service**, the data gathered through the consumer survey indicates a level of compliance with this requirement of around 80%, however in 20% of the cases the information was available on request. The evidence collected through the mystery shopping exercise suggests a lower level of compliance with the requirement to inform consumers about the main characteristics of the service at pre-contractual stage (about 60% on average for all products/services covered, around 70% the travel insurance and current accounts, and only 45% for credit cards).

According to the data collected through the mystery shopping exercise, the compliance level with the requirement to give **information about the supplier** to consumers is moderate-high, as on average 85% received information about the identity of the supplier, 71% about the main business of the supplier and 61% about the geographical address.

The consumer survey indicates a high level of compliance (around 74%-83% depending on the type of information, with 83% reporting having received information about the right of withdrawal and its conditions) with the requirement to **inform consumers about the terms and conditions of the contract**, but in 13%-20% of the cases the consumer had to request the information from the provider. The mystery shopping exercise suggests a much lower level of compliance of around 40%. The compliance level with the requirement to provide information about the right of withdrawal reported by the mystery shoppers is however around 55%.

Regarding the requirement to provide **information about redress mechanisms**, consumer surveys reported a compliance rate of 70%, while data from the mystery shopping suggests that only in 30% this information is provided.

Data from the consumer survey and mystery shopping suggests that pre-contractual information is commonly spontaneously disclosed to consumers<sup>237</sup>. Pre-contractual information is also usually provided in “good time“ before the signature of the contract according to the consumers surveyed in the context of the Open Public Consultation and consumer survey and to the results of the mystery shopping (in a significant share of the cases the information is provided by default on the website of the provider). Half of the consumer associations consulted consider that consumers are provided with the relevant information in good time before the consumer is bound by a contract.

More than 40% of the national authorities consulted indicated that “the information provided before the signature of the contract was not comprehensive and did not cover all relevant obligations of the consumer” as a problematic issue faced by consumers in the context of the Directive.

The fact that some consumers (through the survey and the mystery shopping) report that they did not find all the information to be provided under the Directive may also be due to the practices employed by providers (see EQ1). Even if they comply (with the information provided somehow on the website, under a hyperlink for instance), the

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<sup>237</sup> Consumer survey and Open Public Consultation carried out as part of this research.

prominence of this information may be limited, thereby limiting the likelihood that it is noticed by consumers.

### ***Compliance with the provision on the right of withdrawal***

The extent of compliance with the Directive's cancellation provision appears to be moderate-high based on the data gathered from consumers, consumer associations and national authorities.

Half of the consumer associations consulted and 75% of the national authorities consider that the 'right of withdrawal' is generally respected, with providers seldom failing to meet their obligations in this respect<sup>238</sup>. Of the consumers surveyed, of those that finalised a purchase using a distance means of communication, about 20% withdrew from the contract (98 respondents), and of those only 2% experienced problems.

This is in line with the views collected from national authorities, as only three (around 5%) indicated the providers' refusal to cancel contracts within the cooling-off period and providers trying to charge costs for withdrawal from the contract, as the main problematic issues faced by consumers.

Various commercial tactics are used to circumvent potential revenue losses that can arise from withdrawals<sup>239</sup>. 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<sup>240</sup>. Another tactic is to make the process complex and burdensome which can discourage or prevent consumers from using the right.

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<sup>241</sup>. 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<sup>242</sup>.

### ***Compliance with the provision banning unsolicited communications and services***

National authorities consulted, which expressed an opinion, indicated that financial institutions in their country mostly respect the provisions related to unsolicited services and communications (with one third considering that they do it to some extent). On the other hand, only 55% of the consumer associations consulted indicated that financial providers are generally compliant with these provisions<sup>243</sup>.

Satisfactory compliance levels have been attributed to the application of strict scrutiny and rigorous supervision processes in the financial sector, which may have helped to detect compliance failings more effectively<sup>244</sup>. Overlaps between the Directive and other

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<sup>238</sup> Survey with consumer associations and Member State national authorities.

<sup>239</sup> Survey with business associations, consumer associations and Member State national authorities.

<sup>240</sup> Survey with business associations, consumer associations and Member State national authorities.

<sup>241</sup> Survey with business associations, consumer associations and Member State national authorities.

<sup>242</sup> Survey with business associations, consumer associations and Member State national authorities.

<sup>243</sup> Stakeholder surveys and interviews.

<sup>244</sup> Survey with business associations, consumer associations and Member State national authorities.



regulations (e.g. e-privacy Directive (EPD) and General Data Protection Regulation (GDPR)) have also helped to increase providers' awareness of the illegality unsolicited communications and/or marketing unwanted services to consumers without their prior consent, possibly limiting potential breaches<sup>245</sup>.

Member State authorities have signalled a higher likelihood of problems when it comes to the Directive's provision on unsolicited communications. This has been corroborated by various consumer organisations. Concerns have been raised in relation to spam tactics and 'aggressive telephone solicitation techniques' used by providers, despite many consumers denying permission for unwanted marketing. However, results from the consumer survey indicate that almost 70% of the respondents have never received unsolicited communications about retail financial services without giving their prior agreement.

As regards the sale of unsolicited services, there is no indication that this practice is commonly used by providers. Evidence from the consumer survey indicates that most consumers have not had to pay for a service they did not seek in the first place. This observation was confirmed by the national authorities and consumer associations surveyed. Some studies, however, have found unfair practices in this respect, with providers using, for example, pre-ticked boxes to add services without the explicit consent of the consumer.

## **EFFICIENCY**

The assessment of efficiency considers the relationship between the resources used by an intervention and the achievements and related benefits of the intervention.

### **EQ7. What are the costs and benefits (monetary and non-monetary) attributable to the Directive as opposed to product-specific legislation?**

The costs for public administrations (estimated at EUR 25 million for the period 2004-2018) include one-off costs to transpose the Directive and to implement/adapt the necessary complaint and redress mechanisms and recurrent costs to monitor compliance, enforce and manage complaints. During the same period, the costs for financial providers (estimated between EUR million 585 and EUR 812 million) include significant one-off costs (adaptation of systems, training of staff) as well as recurrent costs with providing pre-contractual information and compliance with the right of withdrawal. The quantifiable benefits of the Directive relate to the reduction of the consumer personal detriment (financial and time losses), estimated to be between EUR 678-1,263 million for the period 2004-2018. The benefits of the Directive provisions have evolved through time due to the introduction of overlapping product-specific legislation.

The implementation of the Directive has had (direct and indirect) positive and negative impacts on consumers, financial providers and public administrations. The size of those impacts is linked to the existing requirements of national legislation at the time the Directive was transposed; the implementation status of the Directive into national law; existing overlaps with (horizontal and product-specific) EU and national legislation; level of compliance of financial providers; and the effectiveness of the Directive in addressing the problems experienced by consumers. The complexity of disentangling the impacts stemming from sector specific and horizontal legislation has rendered the quantification exercise quite challenging.

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<sup>245</sup> Survey with business associations, consumer associations and Member State national authorities.

## Attribution of impacts

Not all costs and benefits related to the provision of pre-contractual information and right of withdrawal and to the ban on unsolicited communications and services in the period 2004-2018 can be attributable to the Directive. The attribution rates for each key provision were calculated by:

- 1) estimating the maximum change in providers' practices that could be attributed to each provision of the Directive per product at the baseline;
- 2) estimating the displacement of those attribution rates to other legislation in the period 2004-2018<sup>246</sup>;
- 3) estimating the attribution of costs of providers considering the compliance level per provision; and
- 4) estimating the attribution of benefits to consumers considering the share of problems that each provision could reasonably address.

More details on the methodology for the attribution of impacts to the Directive's key provision can be found in EQ4 and Annex 7.

Concerning the potential costs stemming from the overlap with other legislation, it is considered that the potential lack of legal clarity cannot be ascribed to the Directive, thus costs related to this uncertainty were not considered. Some stakeholders mentioned that overlaps with other legislation might have led to additional burden (e.g. burdensome information disclosure process for in case of duplication of the information provided) but the evaluation could not quantify it.

## Classification

The **key costs** of the Directive are:

- Substantive compliance costs, which emerge as a result of 'substantive obligations' that imply change for those impacted, including (i) *one-off costs* linked to the adaptation of business processes to meet information requirements; (ii) *recurrent costs*, which are sustained by the targeted stakeholders on a regular basis as a result of the existence of a legal rule<sup>247</sup>. These costs are borne by financial providers (and eventually passed on to consumers).
- Enforcement costs, including the *one-off costs* related to the transposition of the Directive and to implementation/adaptation of complaint handling and redress mechanisms and *recurrent costs* linked to the need to monitor and enforce compliance with the Directive (e.g. sweeps<sup>248</sup>, investigations). These costs are borne by public administrations. Recurrent costs with complaint handling and redress were not considered because the overall number of complaints dropped since 2004. Therefore, while the Directive made access to redress easier it also contributed to eliminating problems faced by consumers.

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<sup>246</sup> Recurrent costs can mostly be attributed to other EU horizontal and product-specific legislation and national requirements – see EQ4 and Annex 7.

<sup>247</sup> Such as the cost of providing the consumer with a right of withdrawal for 14 calendar days at no cost.

<sup>248</sup> A "sweep" is 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 Commission and carried out simultaneously by national enforcement authorities in participating countries.

These costs were assessed following the methodology described in Annex 7. Other potential incremental costs<sup>249</sup> of the Directive were not considered substantial and were not quantified, namely: administrative burdens and hassle costs (e.g. costs related to administrative delays or opportunity cost of waiting time when dealing with administrative procedures), incremental litigation costs or indirect costs.

The potential **direct benefits** of the Directive relate to its objectives<sup>250</sup>:

- To increase consumer protection and lower personal (including financial and non-financial) and structural consumer detriment;
- To consolidate the single market of financial services sold at a distance, increasing cross-border demand and supply and thus economic surplus.

The costs and benefits impact of the Directive in increasing consumer protection is considered significant, due to:

- Improved consumer decision-making thanks to pre-contractual information;
- The right of consumers to withdraw from contracts and therefore avoid non-beneficial or unfair contracts;
- Consumers not being lured into buying unnecessary or inappropriate financial services due to abusive practices, marketing services, cold calling<sup>251</sup>, etc.;
- Better information on redress, making it easier and quicker for consumers to obtain satisfaction when they experience problems.

By contrast, the increase in cross-border sales of financial products through distance means of communication is estimated to be very small (see section 3 and EQs 1 and 3) and although stakeholders agree that the Directive helped to create a level playing field for financial providers across the EU, other factors have inhibited the evolution of cross-border sales. Therefore, the evaluation study found that the impact of the Directive on cross-border sales was positive but minor. Given the small size of the change in cross-border sales and the challenges in disentangling the impact of the Directive (with any degree of certainty) from the impact of other factors, the potential benefit of the Directive in this respect was not quantified.

## Quantification

### *Directive's costs*

The total cost of the Directive for **public administrations** in the EU-28<sup>252</sup> for the whole period between 2004 and 2018 is estimated to be around EUR 25 million<sup>253</sup>, which is about EUR 785,000 per Member State (see Figure 8). This includes *one-off and recurrent costs* and is in line with the views of the national authorities consulted as they indicated that *one-off costs* and annual *recurrent* were both less than EUR 100,000. *One-off costs* in transposing the EU legislation into national law and with the implementation

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<sup>249</sup> Incremental costs and benefits are 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>250</sup> The great majority of stakeholders agreed that the Directive was very beneficial or somewhat beneficial in ensuring a good consumer protection framework at EU level. Both consumer stakeholders and industry stakeholders agree that the existence of the right of withdrawal is the most beneficial aspect of the Directive.

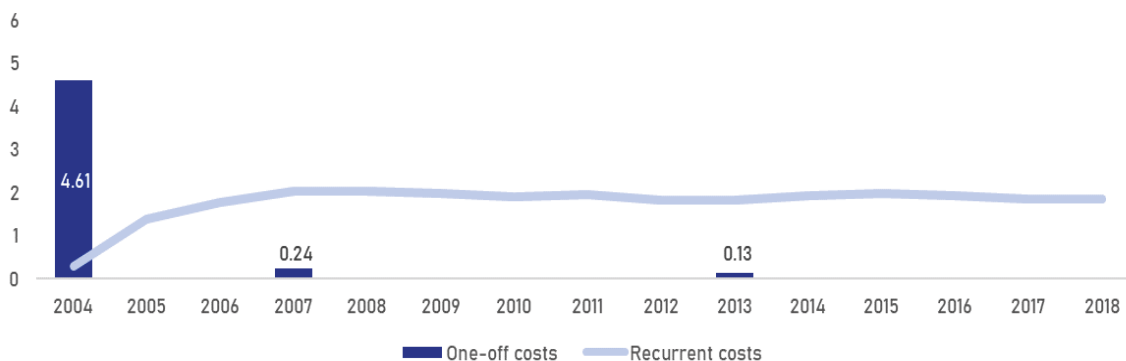
<sup>251</sup> Cold calling refers to unsolicited telephone calls to someone who has not previously expressed interest, in an attempt to sell products or services.

<sup>252</sup> Including in the UK, as the evaluation was carried out while it was still an EU Member State.

<sup>253</sup> All costs are at prices of 2018.

or adaptation of complaint handling/redress systems were about EUR 5 million. *Recurrent costs* for the whole period 2004-2018 were EUR 20 million, an average of EUR 1.4 million per year (about EUR 50,000 per Member State per year). 39% were monitoring compliance, 43% enforcement costs (e.g. sweeps, investigations) and 18% costs related to managing complaints.

Figure 8. *Overview of the estimated costs of the Directive for public administrations (EUR million, prices of 2018)*<sup>254</sup>



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7).

The present value of the **total costs to financial providers** attributable to the Directive is about EUR 585-812 million, of which 40%-55% are *one-off costs* and 45%-60% *recurring costs* (See Figure 9)<sup>255</sup>. The calculation of the costs for all the financial institutions engaged in selling financial services through distance means of communication<sup>256</sup> for the period 2014-2018 considered a rate of compliance with the Directive of 60%-80%<sup>257</sup> and the rates of attribution of costs to each key provision of the Directive and main type of financial services<sup>258</sup>.

<sup>254</sup> The one-off costs for 2007 are those of Bulgaria and Romania and those of 2013 are for Croatia.

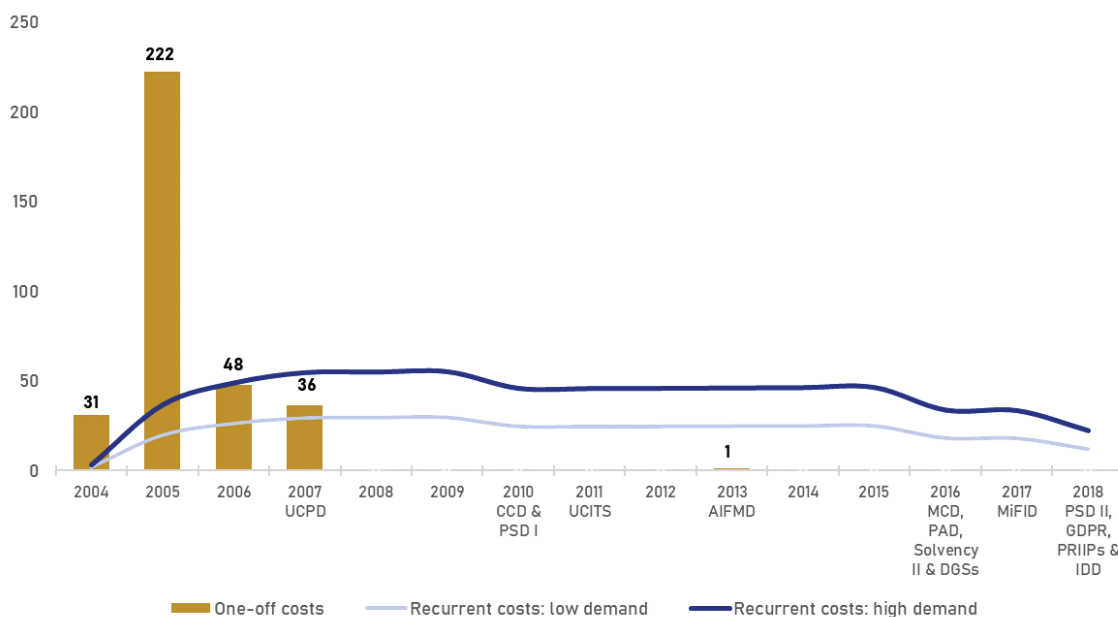
<sup>255</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons, the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference (see Annex 7 and quantification annex in the supporting study).

<sup>256</sup> This includes credit institutions (banks and other credit institutions, monetary market funds, insurance companies and FinTechs. The percentage of institutions engaged in distance selling of financial services was estimated based on the Eurobarometer survey 2016 (see European Commission (2016). Retailers' attitudes towards cross-border trade and consumer protection) and adjusted considering the evolution of e-commerce sales in the period (issoc\_ec).

<sup>257</sup> This estimate was based on the results of the stakeholder surveys on the perceived compliance of financial providers and the results of the mystery shopping. The compliance rate varies for key provision: 60% for pre-contractual information, 70% for right of withdrawal, 75% for unsolicited communications and services. The overall compliance rate was considered to be around 70%. A sensitivity analysis of these parameters was carried out and the results are presented in Annex 7.

<sup>258</sup> Attribution rates were estimated based on conclusions presented in EQ4. Details about their values and the various steps taken to calculate them are provided in Annex 7.

Figure 9. Overview of the estimated costs of the Directive for financial providers (EUR million, prices of 2018)<sup>259</sup>



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7).

The *one-off costs* incurred by financial providers included: familiarisation with the Directive (costs with legal department staff); adapting IT systems to the three key provisions of the Directive; website; revision and production of documentation (costs with staff); internal communications and staff training; and implementation/adaptation of complaint mechanisms. The one-off costs for financial providers attributable to the Directive are estimated to have been in the order of EUR 321 million<sup>260, 261</sup>.

The *yearly recurring costs* to financial providers attributable to the Directive relate to compliance with pre-contractual information (i.e. costs of staff time to provide the required information to customers<sup>262</sup>) and the right of withdrawal (i.e. costs of staff time to process withdrawal requests and cancel contracts). They are estimated to be between EUR 31-57 million in 2008 (highest value in the period which corresponds to the year

<sup>259</sup> One-off costs are spread over the years due to the late transposition of the Directive in 19 Member States in 2005/2006 and 2007 (for ES and LUX) and then to the accession of Romania and Bulgaria (2007) and Croatia (2013) to the EU.

<sup>260</sup> Industry stakeholders had divergent opinions on how costly the implementation of the Directive was, which can be explained by the fact that the implementation costs are directly linked with the existing requirements of national legislation (which may have driven providers to make changes to their procedures) and the business practices of the providers at the time the Directive was transposed into national law. For providers that already had practices in line (or overlapping) with certain requirements and changes imposed by the Directive, it can be assumed that implementation costs were limited. In contrast, the Directive has likely brought about more important costs in sub-sectors or market segments where product-specific (or other forms of) legislation did not exist, or common business practices were far from the requirements set by the Directive.

<sup>261</sup> Details about the assumptions and calculations are provided in Annex 7.

<sup>262</sup> Based on simulations, ICF estimated that the time required to provide the required pre-contractual information is on average 1 minute. With the increase use of automated processes to provide this information to the clients in an automatic way (i.e., without requiring staff time), this estimate is considered very conservative.



when all Member States, except Croatia, had transposed the Directive) and EUR 13-25 million in 2018<sup>263</sup>.

These recurring costs have significantly decreased since 2007 (about 50% overall, 70% for costs related to pre-contractual information and 15% for costs related to right of withdrawal) in spite of the increase in the demand for financial services due to the impact of the introduction of other EU legislation (see EQ4). With the successive introduction of product-specific legislation, the impact of the Directive on recurring costs diminished. In fact, industry stakeholders attribute most of their current compliance costs to other EU horizontal and product-specific legislation and national requirements as opposed to the Directive<sup>264</sup>.

The **total costs** (i.e. the sum of the costs for public administrations and financial providers) is around EUR 609-837 million, of which 39% to 54% are one-off costs and 46% to 61% are recurring costs. Financial providers incurred 96% of the total costs<sup>265</sup>.

The total recurrent costs attributable to the Directive remained stable from 2007 until 2010, when they experienced a first decline (due to the implementation of the Consumer Credit Directive (CCD) and the Payment Services Directive (PSDI)). Afterwards, they remained relatively stable until they dropped steeply in 2016 due to the implementation of product-specific legislation (i.e., mostly the Solvency II that covers pre-contractual information on insurances – a product with a high share of the market –, but also the Mortgage Credit Directive (MCD) which covers pre-contractual information and to some extent the right of withdrawal for mortgages), which reduced the share of costs related to the provision to pre-contractual information attributable to the Directive. In 2007, the total recurrent costs declined slightly due to a reduction of the number of financial providers and in 2018 decreased significantly because of the implementation of the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation), the Insurance Distribution Directive (IDD), the PSD II and the General Data Protection Regulation (GDPR). Hence, the total recurrent costs attributable to the Directive are currently very limited.

### *Directive's benefits*

The increase in consumer protection is translated into a reduction of the consumer personal detriment, i.e. on a reduction of the rate of problems experienced by consumers and on a reduction of the costs (financial, time and psychological) suffered by consumers when a problem occurs (i.e. magnitude).

To estimate the impact of the Directive on the consumer personal detriment, the actual consumer detriment in the period 2004-2018 was calculated (i.e. scenario with Directive) and the consumer detriment was estimated in a hypothetical scenario (i.e. scenario without Directive) in which the Directive (or similar legislation) would not have been

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<sup>263</sup> The lower and upper bounds correspond to the values of the recurrent costs calculated considering the low bound of demand and the high bound of demand, respectively. For details on the estimated lower and upper bounds of demand please see Annex 7.

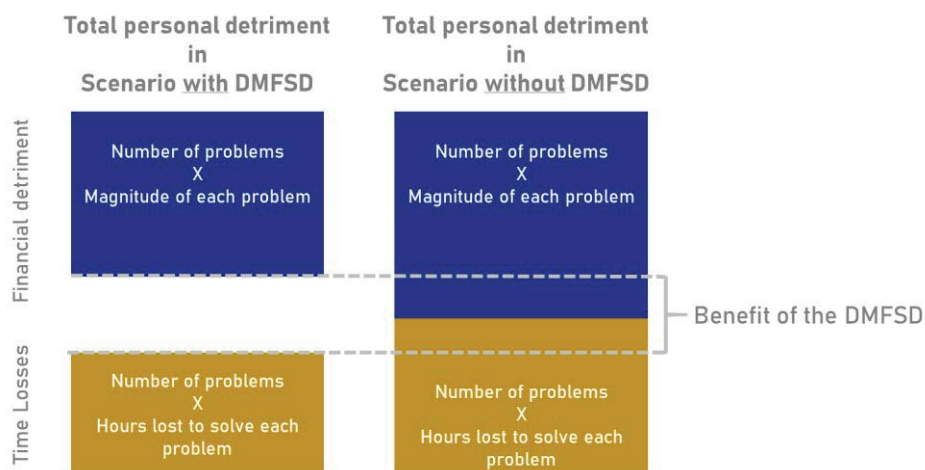
<sup>264</sup> Even in the absence of the Directive, they believe that a significant part of the costs would still be incurred.

<sup>265</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference (see Annex 7 and quantification annex in the supporting study).

implemented, *ceteris paribus*<sup>266</sup>. The difference in the consumer personal detriment between the two scenarios is the net benefit of the Directive.

In each scenario, the consumer detriment was calculated per key provision of the Directive and per type of financial service/product<sup>267</sup>. The various steps followed are described in Annex 7.

Figure 10. *Overview of the approach to estimate the benefits in terms of a reduction in consumer personal detriment due to the Directive*



In addition to the impact on consumer personal detriment, it would have been possible for the provision on pre-contractual information of the Directive to have had a positive impact on the structural consumer detriment, i.e. increase of the consumer surplus as a result of switching to a better deal after receiving more information about the offers available in the market. However, data from the Consumer Markets Scoreboard shows that the percentage of consumers switching providers in the period reduced rather than increased and so this impact is either negligible or non-existent (see Annex 7).

**Benefits in terms of a reduction in consumer personal detriment** due to the introduction of the Directive are estimated at EUR 678-1,263 million<sup>268</sup>, of which 74% correspond to the reduction of financial consumer personal detriment and 26% to the reduction of time losses.

The **benefits of the Directive vary by type of financial service** (see Figure 11), due to various factors, namely the demand for financial services and incidence of problems for that service (since they both influence the total number of problems), the number of complaints for that service (since it influences the magnitude and time losses per problem) and overlaps between the Directive and product-specific legislation regulating that service (as this influences the rate of attribution of benefits to the Directive). Insurances and payment accounts have the highest benefits, mostly due to a combination of two factors: (1) they represent a significant share of the financial services purchased using distance means of communication, and (2) in both cases product-specific

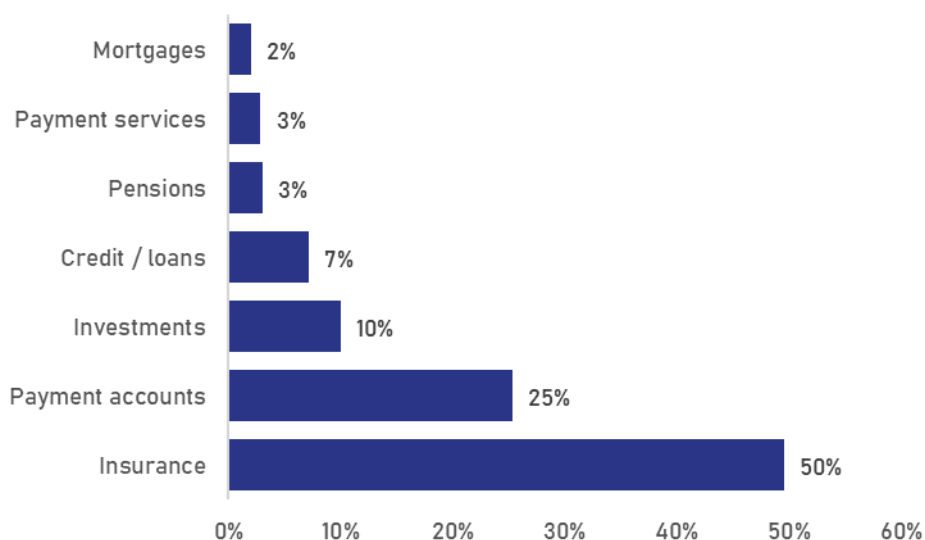
<sup>266</sup> i.e. with other conditions remaining the same.

<sup>267</sup> Insurance, payment accounts, investments, credit / loans, pensions, payment services, mortgages.

<sup>268</sup> This refers to the difference between consumers' personal detriment in the scenario with the Directive and consumer detriment in a scenario without the Directive (or similar legislation).

legislation does not (fully) cover<sup>269</sup> the right of withdrawal during the period of analysis and only covers the pre-contractual information from 2010 for payment accounts and from 2016 for insurances.

Figure 11. *Overview of the net benefits of the Directive, by type of financial service (proportion of the total net benefits)*



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7).

**The benefits of the Directive also vary by key provision:**

- Their impact on consumer detriment differs. The provision on pre-contractual information is the one expected to be able to address the highest percentage of problems faced by consumers, while the provision banning unsolicited communications and services is only effective in addressing a much smaller share of problems<sup>270</sup>;
- The level of compliance of financial providers with each provision also differs (estimated to be higher for the provision on unsolicited services and communications and the lowest for pre-contractual information);
- The estimated effects on the practices of financial providers that can be attributed to each key provision of the Directive (assessed considering the national legislation and existing practices at the baseline and the overlaps with horizontal and product-specific legislation) differ.

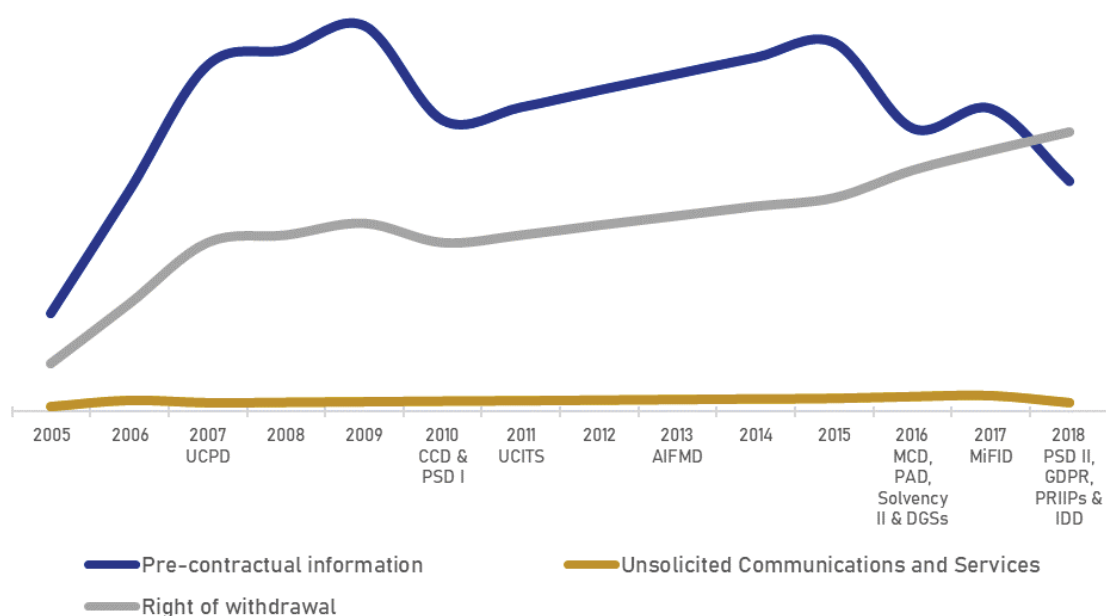
As can be seen in Figure 12, until 2018 the provision with the highest annual benefits was the one on pre-contractual information, followed by the one on the right of withdrawal. In 2018, the provision on the right of withdrawal became the one bringing

<sup>269</sup> The Solvency II Directive provides the right of cancellation for life insurance contracts, however the coherence analysis shows that right of withdrawal in the DFMSD is more stringent and provides wider consumer protection.

<sup>270</sup> This assessment was done based on the description of problems leading to consumer detriment provided by CIVIC(2017) and LE Europe (2019) considering the effectiveness of each provision in addressing those problems. The assessment estimated that only 16.5%, 6% and 2.5% of the reduction in the consumer detriment experienced after the implementation of the Directive (when compared to the baseline) could have been due to the provision of pre-contractual information, the right of withdrawal and ban on unsolicited communications and services, respectively. The remainder 75% of the problems are not within the reach of these measures.

the highest benefits (54% of the total) as product-specific legislation applied in that year (Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) and Insurance Distribution Directive (IDD)) reduced the rate of benefits that could be attributed to the Directive's provision on pre-contractual information. The provision on unsolicited services and communication is estimated to have had a very small impact on the consumer detriment because the e-privacy directive and the e-Commerce Directive already covered unsolicited communications and then later in 2007 the Unfair Commercial Practices Directive (UCPD) also regulated this issue, and also amended the Directive's Article 9 on unsolicited services. Moreover, the General Data Protection Regulation addresses it too. Overall, in the 2004-2018 period, the provision on pre-contractual information represents around 61% of the reduction in consumers' financial detriment, while the right of withdrawal and the ban on unsolicited communications and services represent 37% and 2%, respectively.

Figure 12. *Evolution of the benefits of the Directive (i.e. reduction of consumer personal detriment) per key provision<sup>271</sup>*



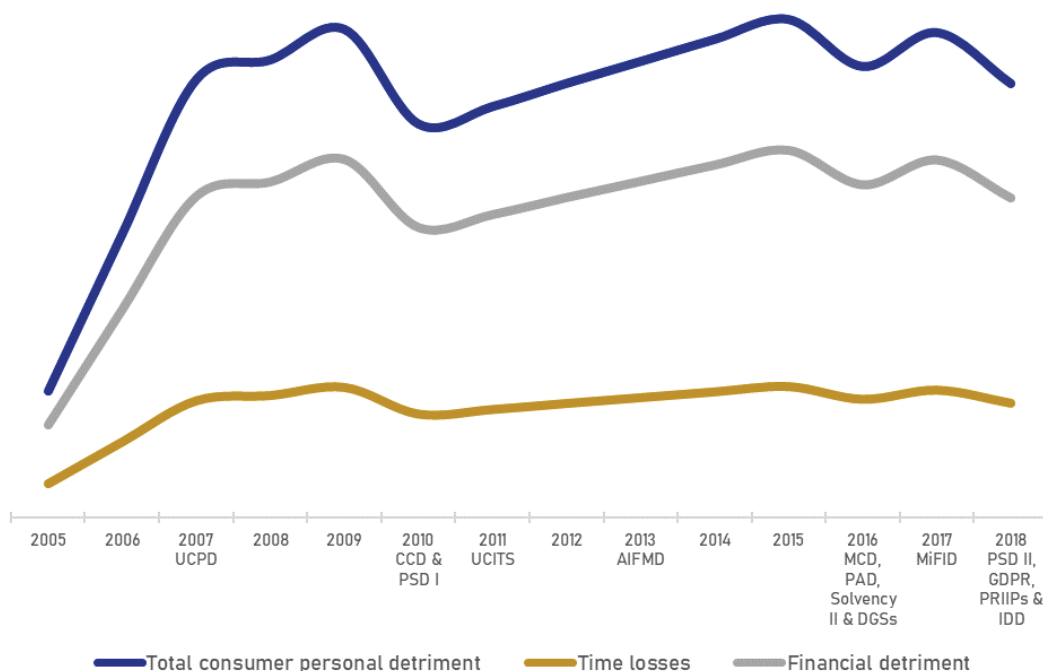
Source: ICF (2019) elaboration of existing data and assumptions (for figures on low and high demand scenario see Annex 7).

As shown in Figure 13, the total reduction in consumer detriment increased until 2010 as countries implemented the Directive (please note that effective transposition for the Directive took place between late 2004 and 2007) and the demand for financial services increased. In 2010, with the implementation of the CCD and PSD I, the benefits attributable to the Directive reduced. However, the increase in demand of products only covered by the Directive led to an increase of benefits from 2011 until 2016, when the MCD and Solvency II were implemented. Afterwards, the benefits increased again as a

<sup>271</sup> This graph has no vertical axis because it shows a trend that is common to the two scenarios analysed in this evaluation (i.e., low demand and high demand). In Annex 7 (i.e., the quantification annex) graphs with the vertical axis are provided for the low demand scenario and the high demand scenario.

result of increases in the demand of financial services still covered by the Directive to some extent (as opposed to product-specific and horizontal legislation). In 2018, with the implementation of the PRIIPs and IDD the total benefits of the Directive reduced again significantly.

Figure 13. *Evolution of the reduction of consumer detriment, 2005-2018*<sup>272</sup>



Source: ICF (2019) elaboration of existing data and assumptions (for figures on low and high demand scenario see Annex 7).

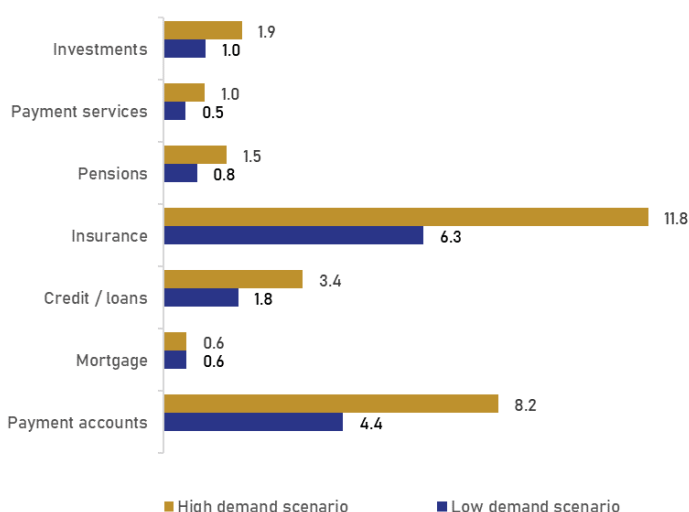
Conservative estimates suggest that **around 15-28 million EU consumers have benefited<sup>273</sup> from key Directive provisions** since its transposition in 2004, chiefly in the context of payment accounts, insurance and - to a lesser extent - pensions (see Figure 14).

<sup>272</sup> This graph has no vertical axis because it shows a trend that is common to the two scenarios analysed in this evaluation (i.e., low demand and high demand). In Annex 7 (i.e., the quantification annex) graphs with the vertical axis are provided for low demand scenario and high demand scenario.

<sup>273</sup> Defined as consumers that experienced a decrease in their consumer detriment due to the introduction of the DFMSD. This was calculated through the following steps: (1) calculate the percentage of individuals that own at least one financial service purchased using a distance mean of communication, (2) multiply this by the percentage of problems per financial service at the baseline addressed by each provision, (3) multiply this per rate of attribution to the directive, and, finally, (4) multiply this by the total population covered by national transposition of the Directive.



Figure 14. *EU population that benefitted from the Directive, by type of financial product owned (million)*



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7).

In line with the evolution of the benefits attributable to the Directive, since 2004 a significant part (58%) of those consumers benefited from the pre-contractual information provision, while 40% experienced a reduction in their consumer detriment due to the provision on the right of withdrawal.

**EQ8. Are the costs of the Directive proportionate to the benefits generated (both monetary and non-monetary)?**

The benefits of the Directive to consumers appear to be proportionate to its costs, according to the economic model developed and the stakeholders consulted. They have remained relatively stable throughout the time due to two opposite forces. The constant and significant increase in purchases of financial services at distance (upward force) and the introduction of other EU horizontal and product-legislation that significantly overlaps with the Directive (downward force). Currently, the key provision with a higher cost-benefit ratio is the right of withdrawal. Until 2016, the provision with the highest net benefit was the pre-contractual information. Since then, the net benefits of this provision have dropped considerably, following the introduction of overlapping product-specific legislation.

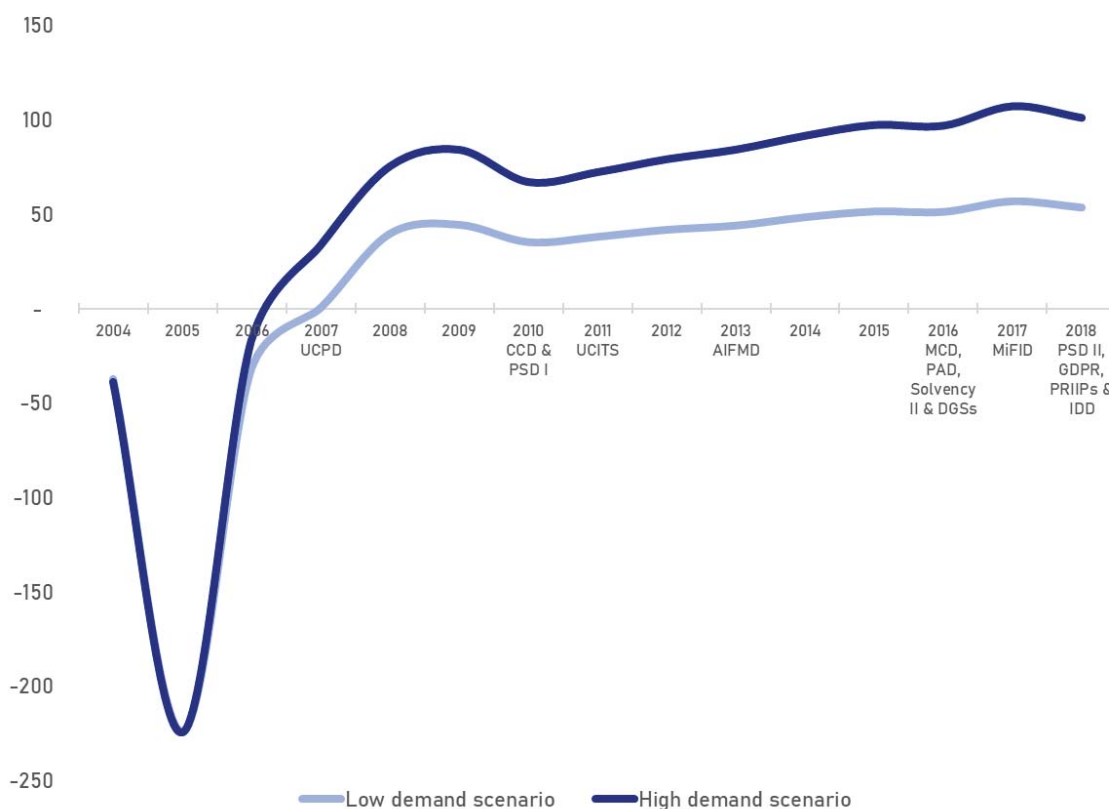
The **estimated net benefits of the Directive** (i.e. the difference between the benefits and costs described in the previous section) are about EUR 69–427 million (present value), while the cost-benefit ratio is between 1.1 and 1.5. As shown in Figure 15, the net benefit of the Directive has been positive<sup>274</sup>, indicating that in every year since 2007 the benefits have outweighed the costs.

Overall, the **trend of net benefits has been positive** due to the increase in the demand of financial services using distance means of communication. However, in 2010, 2016 and 2018 the net benefits dropped 20%, 1% and 6% respectively due to the introduction of

<sup>274</sup> With the exception of the years 2004-2007 when countries transposed the Directive and financial providers and public administrators incurred on one-off costs to adjust to the new requirements.

other legislation (i.e. Consumer Credit Directive (CCD) and Payment Services Directive (PSD I) in 2010, the Mortgage Credit Directive (MCD) and Solvency II in 2016 and the PSD II, the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) and the Insurance Distribution Directive (IDD) in 2018)<sup>275,276</sup>.

Figure 15. *Overview of net benefits to costs attributable to the Directive (2004-2018)*



Source: ICF (2019) elaboration of existing data and assumptions (for figures on low and high demand scenario see Annex 7).

The size and evolution of the net benefits (i.e. benefits minus costs) per key provision of the Directive vary (see Figure 16), as their benefits and costs vary as well.

Until 2018, the provision with the highest net benefit was the pre-contractual information (even after dropping in 2010 due to the introduction of the CCD and PSD I and in 2016 due to the introduction of MCD and Solvency II). In 2018, the net benefits of this provision dropped, following the introduction of overlapping product-specific legislation in that year on insurances (PRIIPs and IDD). In 2018, this provision brought net benefits of about EUR 24-45 million and was responsible for about 45% of the overall net benefits of the Directive in that year.

The net benefits of the right of withdrawal have grown steadily since the introduction of the Directive, as the increase in demand compensated for the reduction in the attribution

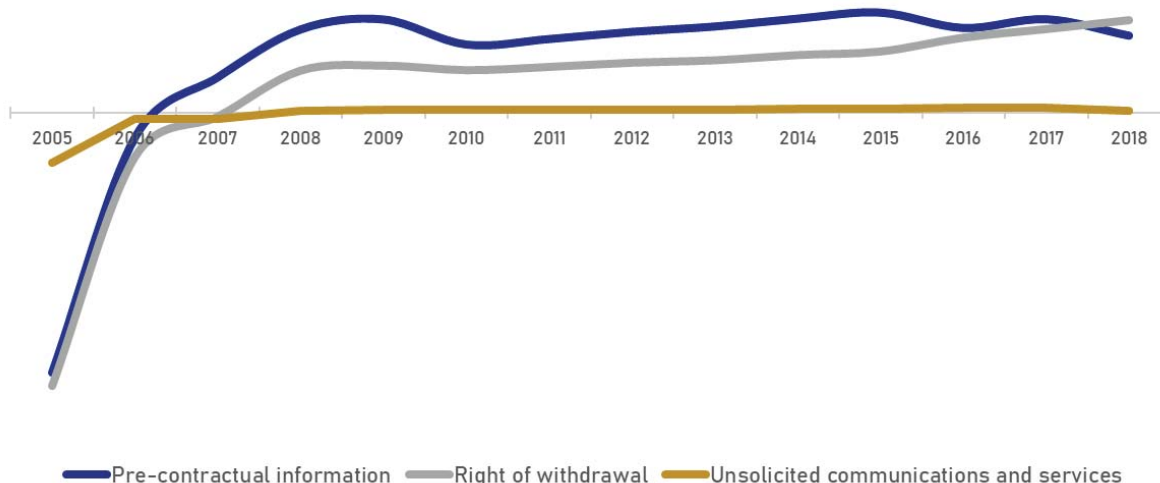
<sup>275</sup> Both costs and benefits attributed to the Directive decreased, although the benefits more than the costs.

<sup>276</sup> The increase in 2017 was due to an increase in demand; the decrease in 2018 was due to the introduction of legislation.

of benefits to this Directive's provision after the implementation of the CCD in 2010 and of the PSD II in 2018. In 2018, this provision brought net benefits of about EUR 29-55 million and was responsible for about 54.5% of the overall net benefits of the Directive in that year.

The ban on unsolicited services and communications overlaps considerably with horizontal legislation transposed in 2003, 2007 and 2018, thus the benefits of the Directive in this respect are and were always low<sup>277</sup>. However, as this requirement does not impose significant recurring costs<sup>278</sup>, its net annual benefits are still positive. In 2018, these provisions is responsible for about 1% of the overall net benefits of the Directive.

Figure 16. Overview of the net benefits per key provision of the Directive<sup>279</sup>



Source: ICF (2019) elaboration of existing data and assumptions (for figures on low and high demand scenario see Annex 7).

While the economic welfare of society is higher due to the introduction of the Directive, the distribution of the effects among stakeholders is not even nor straightforward. Although financial providers bear the costs initially, they subsequently pass those costs on to consumers by increasing prices. Consequently, the **distribution** of the **overall net benefits** (present value) of the Directive **per stakeholder group** over the entire period are as follows:

- Public administrators: around EUR -25 million;
- Financial providers: around EUR -321 million (i.e. one-off costs, assuming that they pass on all their recurrent costs).
- Consumers: between EUR 415 million and EUR 773 (i.e. difference between benefits relate to the reduction of the consumer personal detriment and financial providers' recurrent costs, assuming financial providers pass on all their costs).

When looking specifically at recurrent costs and benefits, and assuming providers pass on all their recurrent costs to consumers, it is only the public authorities that are still incurring costs, while consumers consistently enjoy positive net benefits.

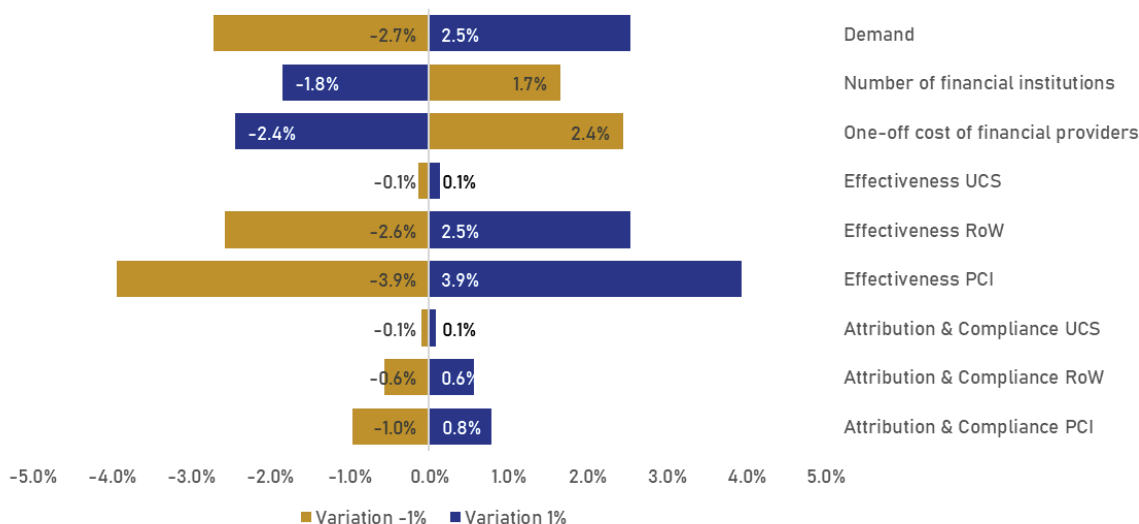
<sup>277</sup> Considering also the overlaps with the EPD from the outset.

<sup>278</sup> As indicated by the majority of industry stakeholders.

<sup>279</sup> This graph has no vertical axis because it shows a trend that is common to the two scenarios analysed in this evaluation (i.e., low demand and high demand). In Annex 7 (i.e., the quantification annex) graphs with the vertical axis are provided for low demand scenario and high demand scenario.

The analysis of sensitivity of the net benefits to variations in (1) the assumed rates of attribution and effectiveness (share of problems addressed) of the three key provisions, (2) the demand, (3) the number of financial institutions and (4) one-off costs of financial providers, shows a **high degree of sensitivity of the model to these parameters**. Figure 17 presents the variation of the net benefits of the Directive to variations of +/-1% in each of those parameters.

Figure 17. *Result of sensitivity analysis*



Source: ICF (2019) elaboration of existing data and assumptions (see Annex 7)

Nevertheless, the **results of the model are in line with the opinions of numerous stakeholders**<sup>280</sup> on the extent to which the costs and benefits can be considered proportionate. Consumer stakeholders, industry stakeholders and national authorities all agree that the benefits of the Directive are equal to or higher than its overall costs (although industry stakeholders pointed out that this is not the case from the perspective of financial providers). Still, several industry stakeholders noted that the introduction of EU legislation that overlaps with the Directive substantially reduced its efficiency and created legal uncertainty that is costly for financial providers<sup>281</sup>.

**EQ9. Are there opportunities to simplify the legislation or reduce unnecessary/disproportionate costs and burden on some stakeholders without undermining the effectiveness of the Directive?**

Data gathered from stakeholders and studies indicates that there is some scope for simplification and burden reduction. This includes streamlining the EU legal framework for financial services and addressing aspects related to the process, means and format through which information is provided and presented to the consumers.

<sup>280</sup> A significant number of stakeholders (around 40%) were not able to assess whether the benefits of the Directive outweigh its costs.

<sup>281</sup> This evaluation considered that the legal uncertainty caused by the introduction of other EU legislation cannot be ascribed to the Directive, thus costs related to this uncertainty were not considered.

A considerable share of industry stakeholders, some national authorities and one consumer association suggested that streamlining **the EU legal framework** for financial services **could lessen the legal uncertainty** caused by the overlapping and sometimes inconsistent EU legislation (horizontal and product-specific) and significantly reduce its burden on financial providers.<sup>282</sup> However, **opinions were divided** among stakeholders on how this harmonisation should be achieved.

Some recommended that requirements legislated by horizontal or product-specific legislation should be removed from the Directive<sup>283</sup>. However, this could negatively impact consumer protection: some requirements are not equally covered by all product-specific legislation (e.g. right of withdrawal, information disclosure requirements); not all current products/services are covered by product-specific legislation; and there could be a legal loophole for future services/products. The supporting study found that the **only provision that could qualify for removal from the Directive without undermining its effectiveness is the ban on unsolicited communications** (already extensively legislated by the e-Privacy Directive (EPD), e-Commerce Directive (ECD), the Unfair Commercial Practices Directive and the General Data Protection Regulation (GDPR)), although as explained in EQ8 the burden it represents is limited. Other stakeholders proposed that the Directive should include statements clearly indicating when its requirements apply and when the requirements of other EU legislation apply instead.

The LE Europe behavioural study (2019) highlights that one aspect that can lead to **consumer detriment when not properly implemented is the requirement that pre-contractual information be provided in a ‘way appropriate to the means of distance communication used’** (Article 3(2))<sup>284</sup>. This is in line with the opinions of consumers to the Open Public Consultation as more than 90% indicated that information should be presented in a way that is adapted to the channel. The same study (2019) suggests that this should be clarified by providing guidance to financial providers on how to comply with this requirement, or by specifying within the Directive exactly how this should be done.

**Some stakeholders** from the industry and consumer associations suggested that the provision of **pre-contractual information should be simplified**. These stakeholders argued that providing too much information to consumers may lead to confusion and/or reduce their willingness to properly read it. This reflects the findings of several studies that suggested that receiving too much information could be detrimental to consumers. In addition, financial providers indicated that the information requirements are costly (e.g. over the phone) or difficult to implement (e.g. on smartphones).

Indeed, stakeholders suggested that better **streamlining of information throughout the customer journey** can benefit consumers by limiting information overload, improving readability, and thereby allowing them to make better decisions. The LE Europe (2019)<sup>285</sup> study<sup>286</sup> suggests that information should be provided prominently, clearly and

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<sup>282</sup> A minority of business associations mentioned that it would be better not to change the legislation framework as it would impose compliance costs.

<sup>283</sup> This was suggested in several position papers submitted in the context of the Open Public Consultation, including: the ASF, Association of Private Bausparkassen eV, Federal office Landesbausparkassen, consumer association Germany, EACB, ESBG, Eurofinas, Crédit Agricole Consumer Finance, EFBS, Insurance Europe, EFAMA.

<sup>284</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

<sup>285</sup> LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex (2019). Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.



at the start of the pre-contractual stage. In the same vein, the European Banking Authority (EBA)<sup>287</sup> recommends that: “information should be presented in plain and intelligible language and in a readable font size, [...] easily adapt to any kind of device” and it should be provided in “short and direct sentences, key words, boldface, bullet points, comparative tables [...] so as to highlight relevant information”.

According to a few stakeholders, providing **more information on existing redress mechanisms** could reduce the burden on consumers (e.g. costs incurred when trying to find relevant information on those mechanisms).

To strike a better balance between costs and benefits, industry stakeholders suggested **widening the scope of ‘durable medium’** in the Directive to **include electronic means**<sup>288</sup>. However, this raises some concerns about consumer protection, as some electronic means may not ensure that the consumer can store information so that it remains accessible for future reference<sup>289</sup>.

Finally, consumer stakeholders recommended that the Directive should require financial providers to **inform consumers about the anniversary date** of the contract well in advance.

Simplifying the Directive’s provisions could negatively affect consumer protection. In that respect, some consumer associations and national authorities **urged caution** and believe that any refinement or simplification of the Directive ought to ensure that its intended objectives and benefits are not undermined in the process. Some industry stakeholders also highlighted that simplifying the Directive will impose one-off costs on financial service providers (as they will have to adjust to the new requirements) and that these should be taken into account when considering changing the Directive.

## COHERENCE

The coherence section analyses the internal coherence of the Directive and the coherence of the Directive with EU and national horizontal and product-specific legislation (under the scope of the evaluation).

### **EQ10. To what extent have the elements of the Directive worked together and between themselves?**

The Directive’s provisions work well together and between themselves; no inconsistencies were identified among the different provisions of the Directive.
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The study shows that the **internal coherence** of the Directive is **high**, with no inconsistencies identified among the different provisions of the Directive. A degree of incoherence mostly stems from the mismatch between broad objectives and the overall

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<sup>286</sup> In line with the findings of other studies, such as the Danish Competition and Consumer Authority (2019). Improving the effectiveness of terms and conditions in online trade in Denmark.

<sup>287</sup> EBA Opinion on disclosure to consumers buying financial services through digital channels, 2019.

<sup>288</sup> About half of the other stakeholders surveyed believed that the Directive should be adjusted in order to face the challenges posed by technological developments, while the other half was of the opinion that the Directive in its current format is sufficiently flexible and technologically neutral to adapt to future developments.

<sup>289</sup> As required by the Directive.

ability of the Directive's provisions to achieve these. This is further analysed in the Relevance and Effectiveness sections (see EQ1 and EQ3).

The aim of the Directive is to consolidate the single market for financial services while attaining a high level of consumer protection. Its goal to bring together Member States' legal frameworks in the areas covered by the Directive – the Directive is a **full harmonisation**<sup>290</sup> Directive unless it specifically indicates where Member States could go beyond (Recital 13 of the Directive).

The different provisions on pre-contractual information requirements (Article 4(2)), right of withdrawal (Article 6(1) and 6(3)), on unsolicited services and communications (Articles 10 and 11), and sanctions and redress (Articles 12, 13 and 14) are not at odds with one another, as the evaluation – including the stakeholder consultations – found no instances of these being internally incoherent.

**EQ11. To what extent have there been synergies and/or overlaps with EU horizontal legislation (e.g. consumer acquis, geo-blocking, data protection rules, electronic commerce Directive)?**

The evaluation found that the key elements of the Directive (provisions of pre-contractual information, right of withdrawal, and unsolicited services and communications) are coherent with the relevant provisions contained in other EU horizontal legislation, and any overlaps identified do not lead to significant inconsistencies.

Most of the Open Public Consultation respondents indicated that the Directive is coherent with the Unfair Commercial Practices Directive (UCPD)<sup>291</sup> and the Unfair Contract Terms Directive (UCTD)<sup>292</sup> (76%), 61% believed that the Directive is coherent with the General Data Protection Regulation (GDPR)<sup>293</sup>. About half of the respondents were of the opinion that the Directive is coherent with the e-privacy Directive (EPD)<sup>294</sup> and the e-Commerce Directive (ECD)<sup>295</sup>. Most of these pieces of EU legislation, while having the same objective of contributing to the proper functioning of the internal market, have a different scope – particularly EPD and GDPR - than the Directive, but can still be relevant to contracts therein.

Pre-contractual information

In general, the Directive complements other horizontal EU legislation in respect of the obligation to provide pre-contractual information. In particular, there are clear synergies between the Unfair Commercial Practices Directive (UCPD) and the Directive.

While not specifically dealing with pre-contractual information, Annex II to the UCPD expressly refers to the content of Articles 3 and 4 of the Directive as examples of material information whose omission may constitute a misleading commercial practice.

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<sup>290</sup> 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>291</sup> 2005/29/EC.

<sup>292</sup> 93/13/EC.

<sup>293</sup> EU 2016/679.

<sup>294</sup> 2002/58/EC.

<sup>295</sup> 2000/31/EC.

The General Data Protection Regulation (GDPR) complements the content of the Directive by establishing<sup>296</sup> the transparency principle and the obligation to provide, in a concise, transparent, intelligible and easily accessible form, using clear and plain language, information on the collection and processing of personal data. While no inconsistencies were found between the Directive and GDPR in terms of the protection of personal data, the interaction between the different provisions in both legal instruments could be better clarified beyond the current reference<sup>297</sup>.

There is a certain degree of overlap between the Directive and the e-Commerce Directive (ECD). Just as the Directive, the ECD<sup>298</sup> sets out rules on provision of general information to be provided by information society services providers and specific information in relation to contracts concluded by electronic means. However, unlike the Directive, the ECD is focused on information society services in general and requires certain information to be rendered easily, directly and permanently accessible, while the Directive requires the pre-contractual information to be provided in paper or any other durable medium.

There is no evidence of either inconsistencies or overlaps in respect of information disclosure between the Directive and the UCTD and the e-privacy Directive (EPD), as none of these legal instruments contain any requirements on the provision of pre-contractual information<sup>299</sup>.

#### Right of withdrawal

**Neither overlaps nor inconsistencies** were found between the provisions of the Directive and horizontal EU legislation as regards the right of withdrawal, as none of these EU legal instruments analysed foresee a right of withdrawal.

#### Unsolicited communications and services

Even though the provisions of some horizontal EU pieces of legislation overlap with Article 10 of the Directive on unsolicited communications, the resulting **framework is coherent** and no significant inconsistencies were identified<sup>300</sup>.

The e-privacy Directive (EPD) regulates unsolicited communications in a similar way to the Directive. Moreover, the EPD and e-Commerce Directive contain further requirements specifically related to unsolicited commercial communication by email<sup>301</sup>.

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<sup>296</sup> Articles 12, 13 and 14 GDPR.

<sup>297</sup> Recital 26 of the Directive states that the Directive applies ‘without prejudice to the particular safeguards available to consumers under Community legislation concerning the protection of personal data and privacy.

<sup>298</sup> Article 5 and Article 10.

<sup>299</sup> Only 9% of the Open Public Consultation respondents found the UCTD to be incoherent with the Directive. 17% of the Open Public Consultation respondents found the EPD incoherent with the Directive. The majority of the Open Public Consultation respondents (55%) did not know whether the Geo-blocking Regulation was coherent with the Directive.

<sup>300</sup> This was also confirmed by the Open Public Consultation, as the majority of the respondents did not find the Directive to be incoherent with any of the EU horizontal laws examined.

<sup>301</sup> Articles 13 EPD; Article 7 ECD. While both the EPD and the Directive offer a similar level of protection with regards to automated calling and fax, this is not the case when it comes to email. Article 13 EPD requires the prior consent of the user even for direct marketing communications via email, which is not offered by Article 10.1 of the Directive. Article 10.2 of the Directive indirectly regulates email in “other means” where the consumer should either give their consent or be given the opportunity to object. The opportunity to object is a lower safeguard than prior consent as required by the EPD. For its part, the ECD establishes an obligation for Member States to ensure that service providers respect the opt-out

Overall, it appears that article 10 of the Directive is redundant since Article 13 of the EPD guarantees either the same or a higher level of protection.

The Unfair Commercial Practices Directive (UCPD) is also coherent with Article 10 of the Directive, as it prohibits aggressive commercial practices, including persistent and unwanted solicitations by telephone, fax, email or other remote media<sup>302</sup>.

Finally, there is also a degree of complementarity between the Directive and the General Data Protection Regulation (GDPR) in respect of unsolicited communications. While the Directive allows suppliers to use certain distance communications subject to the consumer's prior consent (or where the consumer has not expressed their manifest objection), it does not provide any definition of what shall be understood by 'consent'. In this context, the GDPR complements the content of the Directive by defining consent in the context of personal data processing (Article 4) and by establishing the conditions for giving consent (Article 7). The Directive, unlike the GDPR, does not foresee the possibility to withdraw consent for the purposes of marketing communications.

#### Coherence with the Consumer Rights Directive (CRD) and Geo-blocking Regulation

**Both instruments in their current form exclude from their scope retail financial services** and as such no overlap was identified. CRD provides rules applicable to online and off-premises contracts for goods and services, other than financial services. It also includes some elements (such as the ban on pre-ticked boxes) that could be pertinent to address some challenges identified in relation to financial services (see EQ1 and EQ4). The Geo-blocking Regulation provides in its Article 9 for a first short-term review by March 2020, focusing on the possible extension of the scope (including on financial services) but reporting also on its contribution to the functioning of internal market. The Commission is currently preparing such a report, outlining the evidence gathered and indications about next steps, where needed.

#### **EQ12. To what extent have there been overlaps, inconsistencies and gaps with EU product-specific legislation?**

Overall, the Directive and EU product-specific legislation in the context of financial products sold at a distance are aligned. This was confirmed by the legal analysis, the literature review as well as the Open Public Consultation and the survey responses. There is however a significant degree of overlap between the provisions of the Directive and other product specific EU laws, potentially leading to information overload. Stakeholders pointed to the need to clarify how the Directive interacts with product-specific legislation to avoid legal uncertainty.

The coherence of the Directive with EU product-specific legislation in the context of financial products sold at distance was confirmed by the legal analysis, the literature review as well as the Open Public Consultation and the survey responses. In fact, most survey respondents (69%) believe that the Directive is in line and **coherent with other relevant legislation** at EU level related to financial services – with different nuances

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registers in which persons not wishing to receive such commercial communications can register themselves.

<sup>302</sup> Annex I (para. 26) of the UCPD. Since 'unwanted solicitations' are by definition not underpinned by any consent, this provision of the UCPD is consistent with the Directive, which requires the consumer's prior consent to the supplier's use of automated calling systems without human intervention and fax machines to contact them.

depending on the piece of legislation (between 71% for the Consumer Credit Directive (CCD) and 45% for the Alternative Investment Fund Managers Directive (AIFM Directive))<sup>303</sup>.

However, there is a **significant degree of overlap** between the provisions of the Directive and other product-specific EU laws. **In most cases, this is due to the fact that product-specific legislation is more detailed than the Directive to address the specific characteristics of the products they cover.** In fact, only a small minority of the stakeholders consulted believed that existing overlaps are unjustified (ranging between 4% in the area of investments and 16% in the area of credit)<sup>304</sup>. The evolution of the attribution of achievements related to the Directive's provisions (information provision, right of withdrawal) with the introduction of product-specific legislation is discussed in the Effectiveness section (see EQ4).

The evaluation also identified **some minor inconsistencies** between the Directive and product-specific EU legislation<sup>305</sup>. In this regard, only a minority of the Open Public Consultation respondents believed that the Directive is somewhat incoherent or very incoherent with EU product-specific legislation, ranging from 22% for Insurance Distribution Directive<sup>306</sup> to 5% for the Payment Accounts Directive<sup>307/308</sup>. Similarly, only between 2-6% of the survey respondents believe that there are inconsistencies between the Directive and other relevant EU laws<sup>309</sup>. Annex 5 *Legal analysis* summarises the findings on the coherence between the Directive and product-specific EU legislation.

Given the degree of uncertainty stemming from existing overlaps and inconsistencies, some stakeholders suggested to insert in the Directive a **clarification of the interplay between the Directive and EU product-specific legislation**, which could help **making the regulatory set up in this area more 'fit for purpose'**. For instance, the Directive does not contain any rule on conflict of laws, nor does it establish which legal provisions should prevail when the disclosure requirements under both the Directive and other product-specific EU laws apply to the same distant contract. However, some of the product-specific EU laws have legislated this issue to some extent, shedding light on their relationship with the Directive with respect to the provision of pre-contractual information<sup>310</sup>.

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<sup>303</sup> 71% for the CCD, 66% for the MCD, 57% for the PAD, 53% for the PSD II, 50% for the IDD, 53.5% for MiFID II, 50% for the UCITS, 48% for PRIIPS, 46% for the Prospectus Regulation, 45% for the AIFMD.

<sup>304</sup> (16% in the area of credit, 4% in the area of investment, 14% in the area of mortgages, 6% in the area of payment accounts, 10% in the area of insurances and 15% in the area of payment services).

<sup>305</sup> This was confirmed by the legal analysis, the Open Public Consultation and the survey responses.

<sup>306</sup> Directive 2016/97/EU.

<sup>307</sup> Directive 2014/92/EU.

<sup>308</sup> The percentage of Open Public Consultation respondents who found the Directive to be somewhat incoherent or very incoherent with EU product-specific legislation ranged from: 14% for the CCD, 16% MCD, 5% PAD, 22% PSD II, 22% IDD, 14% MiFID II, 10% UCITS, 20% PRIIPS, 12% Prospectus Regulation, 10% AIFMD.

<sup>309</sup> Only 4% of the survey respondents believe that there are inconsistencies between the Directive and product-specific legislation in the areas of credit, investment, payment accounts and insurance. With regard to mortgages, only 2% of the survey respondents found inconsistencies. For payment services, 6% of the survey respondents noted inconsistencies.

<sup>310</sup> For instance, the MCD and CCD have established that the provision of the standard information sheet is deemed to fulfil the pre-contractual information requirements under the Directive, see Article 5(1) of the CCD and Article 14(7) of the MCD. PSD II directly amended some of the provisions of the Directive to



### Pre-contractual information

The evaluation found **significant overlap** between information disclosure obligations under the Directive and product-specific EU legislation<sup>311</sup>.

However, in **most cases**, the pre-contractual information requirements in the different **product-specific** EU rules are simply **more detailed** than those established under the Directive. For example, this is the case of the Consumer Credit Directive (CCD)<sup>312</sup> and the Mortgage Credit Directive (MCD)<sup>313</sup>, establishing, among other things, a further requirement to provide consumers with an adequate explanation of the pre-contractual information in order to place consumers in a position that enables them to better assess the proposed credit agreements<sup>314,315</sup>. In the same vein, the revised Payment Services Directive (PSD II) provides for additional/more detailed pre-contractual information requirements than those contained under the Directive<sup>316</sup>. The Payment Accounts Directive (PAD) also overlaps with the Directive, while going beyond in respect to the list of most representative services linked to a payment account.

Both the Insurance Distribution Directive (IDD)<sup>317</sup> and Solvency II (for life insurance contracts) also establish similar pre-contractual information requirements as those foreseen under the Directive and add some additional insurance-specific requirements<sup>318</sup>. For instance, for life insurance, Solvency II<sup>319</sup> requires to provide the policy holder with pre-contractual information on underlying assets, means of payment of premiums, means of calculation and distribution of bonus and unit-linked policies.

In the same vein, the Market in Financial Instruments Directive (MiFID II) and the Alternative Investment Fund Managers Directive (AIFM Directive)<sup>320</sup> include most of the pre-contractual information requirements foreseen under the Directive and add specific information requirements adapted to the characteristic of the investment products they legislate<sup>321</sup>. Similarly, the UCITS requires the provision of information on investment objectives, risks/rewards, costs and historical performance, among other things.

The same is valid for the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation)<sup>322</sup>, which goes further than

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adapt pre-contractual information requirements to the specificities of payment services. The PRIIPs stipulates that its provisions apply alongside the requirements under the Directive.

<sup>311</sup> Despite existing overlaps, only a minority of stakeholders found these overlaps unjustified (16% in the area of credit, 4% in the area of investment, 14% in the area of mortgages, 6% in the area of payment accounts, 10% in the area of insurances and 15% in the area of payment services).

<sup>312</sup> Articles 5, 6, 7 and Annex II CCD.

<sup>313</sup> Articles 14, 15, 16 and Annex II MCD.

<sup>314</sup> 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 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>315</sup> Article 5(6) CCD and Article 16 MCD.

<sup>316</sup> Title III PSD (in particular, Articles 44-58).

<sup>317</sup> Chapter V (Articles 17, 18, 19, 20) and Article 29 IDD.

<sup>318</sup> Chapter V (Articles 17, 18, 19, 20) and Article 29 IDD and article 186 of the Solvency II Directive.

<sup>319</sup> Article 185 of Solvency II Directive.

<sup>320</sup> Articles 22 and 23 AIFMD.

<sup>321</sup> For instance, the MiFID II requires financial providers to provide consumers with a description of products and policies on asset protection, conflicts of interest and on execution of orders, in order to better assist them in making their investment decisions.

<sup>322</sup> Articles 5-18 PRIIPs.

the Directive and states that pre-contractual information cannot contain cross-references to marketing material. It also limits the maximum number of printed pages for the pre-contractual information provided. The pre-contractual information to be provided under the Regulation on the pan-European Personal Pension Product (PEPP)<sup>323</sup> goes further than the Directive and sets out more stringent information disclosure requirements.

Notwithstanding these overlaps in the provision of pre-contractual information, **some of the requirements** established under the Directive are **not covered** by several of the product-specific EU rules. For example, in relation to the provision of pre-contractual information in the case of voice telephone communications (Article 3(3) of the Directive), only the IDD, CCD and MCD (which expressly refer to the Directive) legislate this aspect. Additionally, neither the IDD nor MiFiD II contain an obligation to provide information on the existence/absence of a right of withdrawal or on the right of early withdrawal. The Solvency II on the other hand only requires to provide information on the cooling off period for life insurance contracts and not for non-life insurance contracts. Similarly, neither the MiFiD II nor the UCITS or AIFMD establish an obligation to provide information on redress. The MiFiD II, the AIFMD and the Solvency II do not require information on the public register and supervisory authority to be included in the pre-contractual information provided to consumers. Additionally, unlike the Directive, neither the IDD nor Solvency II for instance require to provide information on the existence of compensation schemes or guaranteed deposits.

The evaluation identified **only minor inconsistencies** between the Directive and product-specific EU legislation on the provision of pre-contractual information. None of the product-specific EU rules analysed depart significantly from the requirements established under the Directive. As mentioned above, the differences between the different legal instruments chiefly relate to the specific characteristics of the financial products they legislate. Some of the main differences and inconsistencies identified include: the possibility to compare different financial services<sup>324</sup>, the requirement to provide pre-contractual information in a standardised format<sup>325</sup>, the possibility to provide the pre-contractual information immediately after the conclusion of the contract<sup>326</sup>. Differences also relate to the burden of proof<sup>327</sup>, the possibility to claim damages on the basis of the pre-contractual information provided<sup>328</sup> and the differentiation between advertising stage and pre-contractual phase<sup>329</sup>.

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<sup>323</sup> Section I, Article 24 and Articles 26-31 PEPP. For instance, the PEPP requires information on the past performance of the PEPP saver's investment option.

<sup>324</sup> Regulated by MCD, CCD, PAD.

<sup>325</sup> As in CCD, MCD, IDD, PAD, UCITS, PRIIPs and PEPP via standardised information sheets

<sup>326</sup> For instance, while the Directive allows for the provision of the pre-contractual information immediately after the contract under certain conditions, the MCD does not allow for this possibility. MiFiD II allows for the provision of pre-contractual information after the conclusion of the agreement depending on two conditions (consent and delayed transaction) and PRIIPs regulates the provision of the key information document after concluding the transaction, if is not possible before and the retail investor expressly agrees.

<sup>327</sup> Under the PSD II, contrary to what is foreseen under the Directive (Article 15), Member States are required to stipulate that it is for the payment service provider to prove that it has complied with the information requirement (in the Directive this is left to the Member States' discretion).

<sup>328</sup> The Directive does not make any express reference to the possibility to claim damages based on the information provided by the supplier, contrary to PRIIPs and PEPP.

<sup>329</sup> While the Directive does not make a distinction between these two phases, the CCD, MCD, PRIIPs and PEPP all clearly differentiate between the two.

Given that the Directive was enacted in 2002 when digital technologies were not yet very developed, **some of its provisions** on pre-contractual information duties are **outdated** compared to more recent product-specific EU legislation. For example, the Directive only allows for the provision of pre-contractual information on paper or other durable medium<sup>330</sup>. Some of the subsequent product-specific EU rules have slightly adapted the provisions on information disclosure, better reflecting the current use of new technologies (i.e. PSD II, PAD, IDD, UCITS, Prospectus Regulation, PRIIPs, PEPP).

Despite the fact that the Directive is generally considered coherent with other product-specific EU legislation<sup>331</sup>, about half of the stakeholders who submitted position papers in the context of this evaluation have argued that due to existing overlaps on the provision of pre-contractual information, there is a **certain degree of legal uncertainty**. This also means that information disclosure has become a very burdensome process for both suppliers and consumers. In their view, this situation creates a risk of ‘information overload’ that might be to the detriment of consumers’ willingness to read complex disclosure documents and their ability to understand financial products.

### Right of withdrawal

Both the Directive and the Consumer Credit Directive (CCD) state that the consumer has a period of 14 calendar days to withdraw from the financial agreement without giving any reason<sup>332</sup>. However, the Directive foresees reinforced protection of consumers in the case of withdrawal by establishing that the supplier cannot require the consumer to pay any amount unless they can prove that the consumer was duly informed (during the pre-contractual phase) of the amount payable. Additionally, the supplier cannot request such payment if they have commenced the performance of the contract before the expiry of the withdrawal period without the consumer's prior request. Despite these differences, Article 14(5) of the CCD expressly states that wherever the consumer has a right of withdrawal under the CCD, the right of withdrawal foreseen by the Directive does not apply. This provision reinforces the coherence between both legal instruments.

In line with the option contained in Article 6(3) of the Directive<sup>333</sup>, the Mortgage Credit Directive (MCD) does not establish a mandatory right of withdrawal for mortgage credit<sup>334</sup>. However, if a right of withdrawal is granted, the MCD states that the timeframe to exercise this right is at least seven days (instead of the 14 foreseen by the Directive). Where a right of withdrawal is not granted, the consumer should be given a reflection period of at least seven days nevertheless. Like the CCD, the relationship between the MCD and the Directive with regard to the right of withdrawal is legislated under Article

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<sup>330</sup> See Recital 20 of the Directive: “Durable mediums include in particular floppy discs, CD-ROMs, DVDs and the hard drive of the consumer's computer on which the electronic mail is stored, but they do not include Internet websites unless they fulfil the criteria contained in the definition of a durable medium.”

<sup>331</sup> The percentage of Open Public Consultation respondents who found the Directive to be coherent with EU product-specific legislation ranged from: 71% for the CCD, 66% MCD, 57% PAD, 53% PSD II, 50% IDD, 53.5% MiFID II, 50% UCITS, 48% PRIIPs, 46% Prospectus Regulation, 45% for AIFMD. The highest level of incoherence was identified with regard to the PSD II and IDD, with 22% of the stakeholders believing that they were incoherent with the Directive. 69% of the survey respondents believe that the Directive is in line and coherent with other relevant legislation at EU level related to financial services or affecting financial institutions and only 15% disagreed with that statement.

<sup>332</sup> Article 14 CCD.

<sup>333</sup> ‘Member States may provide that the right of withdrawal shall not apply to: (a) any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building, or (b) any credit secured either by mortgage on immovable property or by a right related to immovable property’.

<sup>334</sup> Article 14 MCD.

14(6) MCD, which states that where the consumer is granted a right of withdrawal for a mortgage credit, the Directive does not apply. This provision increases the existing synergies between the MCD and the Directive.

While the Directive sets the maximum number of days within which the right of withdrawal can be exercised, the Prospectus Regulation<sup>335</sup> states that the right of withdrawal cannot be exercised until a minimum of two days after the final offer price and/or amount of securities has been filled<sup>336</sup>. For its part, the revised Payment Services Directive (PSD II) allows the consumer to withdraw their consent to execute a payment transaction or a series of payment transactions at any time, as long as it takes place before the moment of irrevocability.

In the context of individual life insurance contracts, The Solvency II Directive provides for a right of withdrawal that can be exercised between 14 and 30 days from the time when the consumer was informed that the contract had been concluded . Thus, the right of withdrawal under the Solvency II Directive is less stringent than the Directive which establishes a period of 30 days to exercise this right. Moreover, Solvency II also allows for two exceptions to the right of withdrawal that are not specifically foreseen under the Directive: a) for contracts with a duration shorter than 6 months; b) for policy holders who do not need special protection because of their status. Additionally, unlike the Directive, Solvency II does not mention that the exercise of the right of withdrawal cannot carry any penalty but only that the policy holder will be released from any future obligations arising from the contract. There is also a difference in the way the right of withdrawal has to be notified under both Directives. While the Directive requires to notify the withdrawal “by means which can be proved in accordance with national law”, the Solvency II Directive does not include any requirement on the notification of withdrawal.

Hence, there are **some minor inconsistencies** between the Directive and the PSD II, the Prospectus Regulation and in particular, with the Solvency II Directive on the right of withdrawal. **None of the other product-specific EU laws analysed** for the purposes of this evaluation **provide for a right of withdrawal**.

Similar to the findings on the provision of pre-contractual information, the interaction of the Directive with other product-specific EU legislation with regard to the right of withdrawal could be better clarified to avoid legal uncertainty and to maximise existing synergies.

#### Unsolicited communications and services

The evaluation identified **no overlaps or inconsistencies** between the Directive provisions on unsolicited services and communications and similar provisions under the EU product-specific legislation analysed.

### **EQ13. Is the Directive coherent with national consumer protection legislation and product-specific legislation?**

Evidence showed that there is significant overlap between national provisions transposing the Directive and national horizontal consumer protection and product-specific legislation. Most of the identified overlaps and inconsistencies mirror those
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<sup>335</sup> This Regulation only foresees a right of withdrawal in cases where the final offer price and/or amount of securities to be offered to the public could not be included in the prospectus.

<sup>336</sup> Article 17 Prospectus Regulation.

analysed under the previous EQ and are linked to the national transposition of EU-level horizontal and product-specific legislation.

A degree of overlap between the national provisions transposing the Directive and national consumer protection and product-specific legislation was found primarily in the provisions of pre-contractual information and the right of withdrawal.

#### *Pre-contractual information*

The evaluation found that all Member States experience a degree of overlap between the national transposition of the Directive and other national consumer protection laws (both horizontal and product-specific) on the provision of pre-contractual information in distance contracts of financial services. Additionally, the national consumer protection and most product-specific legislation in all Member States contain more stringent provisions on information disclosure, mainly due to the transposition of EU product-specific legislation.

Some Member States<sup>337</sup> have introduced more stringent language requirements for the provision of pre-contractual information, by establishing the **language(s)** in which this information must be provided. While the Directive only requires the provision of pre-contractual information ‘in good time’ before the consumer is bound by an agreement, the product-specific legislation in some Member States has established more stringent **time requirements**<sup>338, 339</sup>. As regards the “durable medium”, a Member State does not allow pre-contractual information to be provided on a durable medium other than **paper**<sup>340</sup>.

Several Member States<sup>341</sup> have regulated the **interplay** between the national transposition of the Directive and other product-specific laws (by stating that whenever the latter contain specific information disclosure requirements, they take priority over application of the national provisions transposing the Directive). In some Member States, despite having no explicit legal provision on which law prevails in practice, the general civil law principle of *lex specialis* applies. In others, however, national provisions

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<sup>337</sup> Including AT, BE, FR, DE, EL, IE, IT, LV, LU, NL, PT, RO, SK, SI, ES, UK.

<sup>338</sup> For instance, in Romania, the national transposition of the Directive only requires pre-contractual information to be provided ‘in due time’ while the national legal provisions transposing the CCD require the information to be provided ‘in sufficient time’, but not less than 15 days prior to contract conclusion. Similarly, in Spain, Article 14 of the Mortgage Act states that the pre-contractual information must be provided at least five calendar days before the conclusion of the contract and, in any case, before the consumer assumes any obligation arising from the offer or the loan or mortgage loan agreement. If these requirements are not met, the contract can be null and void. Where an intermediary is involved, the pre-contractual information has to be provided at least 15 calendar days before the conclusion of the intermediation contract and, in any case, before the consumer assumes any obligation. A similar provision exists in Greece, where the law on mortgage credit requires the consumer to be provided with pre-contractual information at least 10 days before a binding offer or signing the mortgage credit agreement.

<sup>339</sup> In Greece, while the national transposition of the Directive does not require financial service providers to provide the pre-contractual information ‘in good time’ before signing the contract, Greek product-specific laws on credit, insurance and investment contracts require them to provide the pre-contractual information ‘in sufficient time’ before signing the agreement. Ministerial Decision Z1 699/2010, Law 4583/2018 and Law 4514/2018.

<sup>340</sup> Article 382 Insurance Act, HR.

<sup>341</sup> For example, BE, DE, PL, PT, EL, IT, HR, CY, DK, IE, NL, LU, ES.



transposing the Directive apply cumulatively with horizontal and product-specific legislation, which may result in a long list of information disclosure requirements<sup>342</sup>.

### Right of withdrawal

The Directive is **generally coherent** with national consumer protection and product-specific legislation applicable to distance sale of financial products<sup>343</sup> in respect of the right of withdrawal. However, **significant overlap** and **some discrepancies** were identified for credit agreements and - to a lesser extent - for insurance and mortgage contracts. However, these differences do not seem to be controversial in practice, as most Member States have regulated the relationship between *lex generalis* (horizontal law, here the Directive) and *lex specialis* (product-specific legislation) for conflicting provisions on the right of withdrawal.

In all Member States, the **timeline to exercise the right** of withdrawal for credit contracts mirrored that provided under the Directive (14 days)<sup>344</sup>. Similarly, about half of the Member States also foresee the same timeline to exercise the right of withdrawal for life insurance contracts (30 days)<sup>345</sup> and eight Member States do so for mortgage agreements (14 days)<sup>346</sup>. On the other hand, in line with the findings at EU level (see EQ12), national product-specific laws regulating the right of withdrawal for payment services and for investments provide for different rules than those under the Directive. Many of the discrepancies relate to different timelines to exercise the right of withdrawal, particularly for insurance and mortgage products, as in Estonia<sup>347</sup>, Belgium and Germany<sup>348</sup>, for instance, for life insurance and pension contracts (14 days instead of 30) Cyprus, (5 days for mortgage contracts)<sup>349</sup> and Luxembourg (7 days<sup>350</sup>).

In terms of the **notification process** and **formal requirements** to exercise the right of withdrawal, there are **some differences** between the national transposition of the Directive and product-specific legislation in several Member States. For instance, in Belgium, to exercise the right of withdrawal from credit<sup>351</sup> and mortgage<sup>352</sup> agreements, the consumer is required to inform the credit provider by registered mail or by another medium accepted by the credit provider. This is a stricter rule than under the national law transposing the Directive, which only prescribes the written form requisite or a notification via another durable medium that is available and accessible to the supplier.

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<sup>342</sup> This was the case in Italy and Poland, for example, while one of the Open Public Consultation respondents stated that, in Germany, the retail investor receives a KID containing standardised information in addition to the information required under the national transposition of the Directive.

<sup>343</sup> Although the analysis focuses on those provisions that overlap/differ from those contained in the national transposition of the Directive for financial products sold at distance, the majority of the national product-specific legal instruments examined apply to both distance contracts and 'on-premises' contracts.

<sup>344</sup> This is due to the transposition of the CCD in all Member States.

<sup>345</sup> AT, BE, BG, CY, DK, FI, FR, HU, IT, PL, PT, SK, SI, UK. In Italy, however, there is an exception for life insurance covering the new form of pension backed loan created by Act No 232/2016. For this type of life insurance, the right of withdrawal is 14 days.

<sup>346</sup> BE, FI, HU, PL, SK, SI, ES, LU. In the Netherlands, there is a reflection period of 14 days but not a right of withdrawal.

<sup>347</sup> Sec. 433 of the Law of Obligations Act.

<sup>348</sup> § 8 VVG.

<sup>349</sup> Section 14(7)(a) of Law 38(I)/2016.

<sup>350</sup> Article 55 Law of 14 August 2000 on Electronic Commerce.

<sup>351</sup> Article VII.78, § 3, 11 Code of Economic Law (CEL).

<sup>352</sup> Article VII.134, § 3, 11 ° CEL.

The conditions for withdrawing from payment services differed from those set out under Article 6 of the Directive and varied between Member States<sup>353</sup>. For example, in several Member States, the consent for payment services can be withdrawn by the payer at any time until the time of irrevocability of the payment.

There are some **minor differences** between the national transposition of the Directive and national consumer protection and product-specific legislation in respect of the **timeline and conditions for the payment of the service provided before withdrawal**. For credit agreements, several Member States<sup>354</sup> require the consumer to return not only the amount received but also the interest accrued on the credit while this was available to the consumer<sup>355</sup>. However, most of these differences are merely a natural consequence of the specific characteristics of the different financial products and do not pose any challenges in practice as the general civil law principle of *lex specialis* usually applies.

#### Unsolicited communications and services

On unsolicited services and communications, the provisions of the Directive are **generally coherent** with national horizontal consumer protection and product-specific legislation. While some Member States have some overlap between the national transposition of the Directive and other national consumer protection laws, in others, unsolicited services and communications were only regulated by national laws transposing the Directive<sup>356</sup>. The evaluation did not identify any major inconsistencies between the national transposition of the Directive and other national laws for unsolicited services and communications.

However, **some** Member States have **minor differences** between the national transposition of the Directive and national consumer protection and product-specific legislation. For example, in Luxembourg, the Law on the protection of individuals for processing personal data in electronic communications also allows for unsolicited communications without the express consent of the consumer if they have directly provided their contact details to the supplier<sup>357</sup>. Very similar provisions are contained in the Italian<sup>358</sup>, Slovak<sup>359</sup> and Spanish<sup>360</sup> horizontal consumer protection laws.

#### **EU ADDED VALUE**

The following section presents the main benefits of this EU intervention, and explains to what extent the positive effects could not have been achieved at national level.

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<sup>353</sup> In Greece, Hungary, Latvia and Luxembourg, the consumer and the service provider can also agree on a notification period for the withdrawal, but this period cannot be longer than one month. In Finland, the right of withdrawal for binding long-term savings contracts is 30 days.

<sup>354</sup> See, for instance: FI, AT, EL, ES, MT, SK, SI, BE.

<sup>355</sup> In Finland, Austria, Latvia, Slovenia and Belgium, for instance, the creditor can ask the consumer who exercised his/her right of withdrawal to pay for any official charges paid by the creditor that cannot be reimbursed.

<sup>356</sup> AT, DE, CY, CZ, HU, MT, PL, SI, SE.

<sup>357</sup> Article 11 Law 30 May 2005 on specific provisions for the protection of the individual with regard to the processing of personal data in the electronic communications sector.

<sup>358</sup> Section V, para. 2.3 of the Bank of Italy.

<sup>359</sup> Article 62 Act no. 351/2011 Coll on electronic communication.

<sup>360</sup> Article 21 Act 34/2002 of 11 July on information society and e-commerce.

**EQ14. What is the added value delivered by the Directive and its implementation over and above what could reasonably have been expected from national legislation in the Member States alone? Is there evidence of clear benefits from EU level action (e.g. in terms of the consolidation of the internal market)?**

There were clear benefits from EU-level action, at the baseline, specifically, warranting the same standards of consumer protection for all financial services sold at distance on the three key aspects covered by the Directive, as well as ensuring a large level playing field between providers on these aspects. Following the entry into force of product-specific legislation, the added value of the Directive declined in its value over time but overall remains considerable.

Overall, the **added value** of the Directive **remains considerable** despite the decline in its value over time following the entry into force of product-specific legislation. This is mostly due to the fact that the Directive allows for a **minimum level of consumer protection to be consistently established among Member States** in a way that is **flexible** enough to be applied to new products and circumstances **thanks to its product neutrality and technology neutrality**. When the Directive entered into force in **2002**, its contribution to EU-wide standards for consumer protection and to a level-playing field for providers was **quite clear**. The Directive established general principles that applied horizontally to different business areas and acted as a safety net in those Member States whose national legislation did not cover those areas. The subsequent enlargements of the EU have shown the **added value** of the Directive for new Member States, most of which did not have similar provisions on the product areas covered by the Directive.

With the introduction of product-specific legislation **the Directive's EU added value has diminished**. As discussed in the previous sections (see EQ4, EQ12) where the Directive covered all products during 2002-2007, by 2010 (Consumer Credit Directive (CCD) and Payment Services Directive (PSD I)) around 8% of sales were covered by product-specific legislation, 50% in 2016 (Mortgage Credit Directive (MCD), Payment Accounts Directive (PAD)), 54% in 2018 (PSD II) and 90% since 2018 (Insurance Distribution Directive (IDD)).

However, **key benefits of EU-level action remain**, given that currently, **for some financial services some elements are covered by the Directive alone**, including specific requirements for pre-contractual information<sup>361</sup> and the right of withdrawal<sup>362</sup>.

Moreover, the Directive is considered to be an **important** legislative support and a **'safety net'** for **products falling outside the scope of horizontal or product-specific legislation and for new products that may appear on the market, especially in the rapidly evolving FinTech context**.

Currently, the Directive has a limited impact on the internal market because of the small size of cross-border market. However, as explained in EQ1, there is an **increasing demand for cross-border financial services that is often unmet** due to limitations of offers to domestic customers. **Digitalisation** of financial services could **allow to reduce certain costs and supply-side barriers** and lead to increased **cross-border selling online** of current and new products. Hence the **added value of the Directive**, as a **'safety**

<sup>361</sup> For instance, for personal pensions, credits below EUR 200 and above EUR 75,000, and information on the right of withdrawal for most other type of products except payment services, credits between EUR 200 and 75 000 and the some mortgages.

<sup>362</sup> For most other type of products except payment services, credits between EUR 200 and 75 000 and the some mortgages.

**net' covering specific elements for some financial services as well as new products, would increase.** Most stakeholders consulted for the evaluation (Open Public Consultation, targeted consultations) generally believe that **the Directive had a high or medium level of added value.**

**EQ15. What would be the most likely consequences of withdrawing the Directive assuming that product-specific legislation and horizontal legislation stays in place? Would the interests of consumers be significantly damaged?**

Withdrawing the Directive now would have less of a detrimental effect on consumers than it might have had a decade ago. Although the advent of new product-specific legislation would certainly soften the consequences of withdrawing the Directive itself, a number of adverse effects are nonetheless possible. In particular, the pre-contractual information requirements for savings accounts and credits below EUR 200 and above EUR 75,000 would become less stringent and a significant share of financial services would not be covered by the right of withdrawal anymore (e.g. payment accounts, insurances, personal pensions and credits below EUR 200 and above EUR 75,000, as well as any newly emerging innovative products).

Withdrawing the Directive could mean that most of the provisions are not available to consumers when using certain financial services, decreasing legal clarity and certainty and negatively impacting consumer interests. This could lead to different levels of consumer protection depending on the type of financial service used. A withdrawal of the Directive would also reduce the existing playing field and give undue competitive advantages to financial providers in Member States where requirements would be lower or where it would be easier for them to offer services cross-border.

Consumer associations argued that withdrawing the Directive would lead to **regulatory gaps and divergence of standards**. Some industry stakeholders did argue that any change – even removing the Directive – would lead to adaptation costs simply because every change implies new costs.

In terms of the Directive's specific provisions, the **right of withdrawal** is now covered by several other sector-specific pieces of legislation, but its length is not uniform. However, in some areas, it is available only because of the Directive (See EQ2). For **pre-contractual information**, a withdrawal of the Directive could have detrimental effects for consumers where its specific requirements are not covered in other legislation (See EQ2).

In addition, without the Directive, there is a possibility that **uncertainty and legal confusion would increase**. Depending on how financial services evolve, the product-specific legislation currently in place may not be sufficient to cover new, emerging products. As digitalisation is expected to expand, and thereby distance sales, there is a considerable likelihood consumer protection standard would drop following its withdrawal.

Withdrawing the Directive at EU level may lead **individual Member States to close perceived gaps** at national level. This could lead to an increasingly fragmented approach to the regulation of market developments, with associated differences in levels of consumer protection for distance sales. As distance sales are increasing, removing the Directive would mean that as this sales channel becomes more important, levels of protection would be higher in some Member States as opposed to others. Reduced harmonisation of the provisions covered by the Directive would adversely impact cross-

border distance sales. Greater differences between Member States would heighten the difficulties for financial service providers to comply with the varying regulations and possibly imply higher costs. It would furthermore distort competition due to a reduction of the current level-playing field.

## 6. CONCLUSIONS AND LESSONS LEARNED

The evaluation results will feed into the review of the Directive, which was included among the REFIT initiatives of the Commission Work Programme 2020<sup>363</sup>.

### *Market and regulatory developments*

The Directive was adopted in 2002 to support the free movement of financial services in the internal market and foster consumer protection through the harmonisation of the information to be provided prior to the conclusion of the contract, the introduction of a 14-day right of withdrawal and the ban of unsolicited services and communications.

However, since 2002, several developments have occurred in the market. Digitalisation has changed the way products are marketed and sold by providers and consumer preferences. The digitalisation of the financial services sector brought new and more complex products, increased the speed with which consumers can purchase a financial service (e.g. speedy or ‘one-click’ products) and given providers the tools to better influence and shape consumer behaviour (e.g. using ‘Big Data’ to personalise communications and offers or giving prominence solely to positive reviews). In this context, it seems that **consumers remain in a vulnerable position**.

Moreover, since 2002 several pieces of **product specific legislation** introduced similar provisions to those introduced by the Directive, but focusing on the specific features of the regulated product.

### *The Directive’s objectives*

The evaluation found that the **objectives** of the Directive were **in line with the expected needs** of consumers and financial service providers at the time the Directive was introduced **and remain relevant**. However, developments in the market (mostly due to the increasing digitalisation) and the emergence of new selling practices on the one hand and new insights in the area of consumer behaviour on the other hand, reveal that **some consumer needs** (presentation of the information online, impact of choice architecture, complexity of products) are **not fully addressed** by the Directive.

The **objective** of contributing to **better consumer protection** and trust has been **achieved to some extent**. The majority of the stakeholders from all groups of stakeholders consider that the Directive contributed a) to increased consumer confidence, knowledge and understanding of the products purchased, by encouraging sufficient information disclosure prior to the conclusion of the contract and b) in helping consumers that changed their mind about the products they have bought to exercise the right of withdrawal.

Since the introduction of the Directive, levels of consumer trust have increased while the number of consumers experiencing problems - and those who have complained - has

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<sup>363</sup> According to the revised 2020 CWP, adoption of the review has been postponed until the fourth quarter of 2021.



reduced for all financial services. The effectiveness of the Directive's provision on pre-contractual information has been somehow hampered by the way (length, prominence, timing) in which the relevant information is provided to consumers.

The objective of **single market consolidation** has been achieved to a **limited extent**. The increase of distance sales thanks to digitalization has led to an increase in cross-border selling of financial services since 2011. However, the **cross-border market for financial services remains very limited**. Many barriers to cross-border services from both demand (e.g. uncertainty about consumer rights abroad, language) and supply side (e.g. different tax regimes) are beyond the influence of the Directive and remain pertinent. They prevent financial providers from offering financial services cross-border and can lead to an unmet demand.

On the other hand, the **Directive has created a level playing field** for financial services providers by introducing a minimum set of rules for distance selling at EU level which led to a less fragmented regulatory framework for them. The level playing field **could be further improved** by ensuring maximum harmonisation of the national transposition of the Directive and its more consistent enforcement, complementing the full harmonization approach followed in product-specific financial services legislation.

#### *Enforcement*

All Member States have implemented the Directive and are enforcing it. They have also put in place the required redress mechanisms for consumers. However, the **variety** in the **enforcement landscape** across Member States, with very different types and magnitudes of sanctions and remedies available to consumers depending on the country, point to *de facto* differences in the level of consumer protection across the EU. This could also negatively affect the level-playing field between providers as those located in countries with a more lenient enforcement regime could have an advantage over their competitors based in other countries.

Data collected in the course of the evaluation suggests a **reasonable level of compliance** with the key provisions of the Directive. The compliance levels are not the same for all provisions, though. While the level of compliance with the provision on unsolicited services is considered very high, the compliance levels with the right of withdrawal are moderate-high, and only moderate when it comes to pre-contractual information and unsolicited communication. **This points to the need to step up enforcement.**

#### *Overlap with other legislation*

Because of the **introduction of product-specific legislation** since 2004, sector-specific legislations would usually take precedence over the Directive's provisions when they overlap or are more specific (following the *lex specialis* principle). The Directive is also **complemented by horizontal principle-based EU legislation** such as the Unfair Commercial Practices Directive and the Unfair Contract Terms Directive.

Due to the introduction of product-specific legislation and horizontal legislation since its adoption the **relevance and added value** of the Directive have been **decreasing**. **Current achievements in consumer protection and level playing field can be attributed to the Directive only to a limited extent and have decreased** over time. Achievements in the context of the right of withdrawal can be attributed to the Directive

for most of the products except credits covered by the Consumer Credit Directive, to some mortgages and payment services. However, achievements in the context of pre-contractual information are partially attributable to product-specific legislation and achievements in the context of unsolicited communications and services are not attributable to the Directive anymore.

However, the Directive still provides a **sound ‘safety net’** to capture the distance selling of any new financial products or of products whose sector-specific legislation does not set out rights for consumers as regards information to be provided prior to the conclusion of a contract or the right of withdrawal. This way, it ensures that a solid consumer protection framework is in place.

The evaluation found that the key elements of the Directive are **coherent with the relevant provisions contained in other EU horizontal legislation.**

**Overall**, the Directive is also **in line with EU product-specific legislation.** There is however a **significant degree of overlap** among the provisions of the Directive and other product specific EU laws, potentially leading to legal uncertainty. Stakeholders pointed to the need to clarify how the Directive interacts with product-specific legislation to avoid legal uncertainty. Evidence showed that there is also a **significant overlap** between national provisions transposing the Directive and national horizontal consumer protection and product-specific legislation mirroring the findings on coherence at EU level.

#### *Directive’s main provisions*

The Directive’s provisions on **pre-contractual information** are today **still relevant** for savings accounts, consumer credits not covered by the Consumer Credit Directive in its current form and personal pensions. Some consumer needs concerning pre-contractual information are incompletely addressed by the Directive, e.g.: ensure that information is presented in a way that is adapted to the (digital) device used; ensure that information is presented in a way that improves consumers’ ability understand key points; ensure that information is easily accessible and provided in a timely manner. **The Directive could be more ‘fit for purpose’ if it were to streamline the information throughout the customer journey**, taking into account the interplay with sector specific legislation

The provisions on the **right of withdrawal** are **still relevant** for a number of product categories sold at a distance (mainly payment accounts, saving accounts, consumer credits not covered by the Consumer Credit Directive in its current form, certain insurances and personal pensions). However, this **right could be better enacted** through additional mechanisms to ensure consumers can make effective use of it.

The provision of the Directive on preventing **unsolicited services** was explicitly **amended by the Unfair Commercial Practices Directive (UCPD)**, which prohibits inertia selling practices. It remains relevant but the achievements of the ban on unsolicited services can be attributed to UCPD.

Finally, the provisions on **unsolicited communications** have **become irrelevant** due to the ePrivacy Directive, the e-Commerce Directive, the Unfair Commercial Practices Directive and the General Data Protection Regulation.

#### *Costs and benefits*

The costs for **public administrations** is estimated at EUR 25 million for the period 2004-2018. It includes one-off costs to transpose the Directive and to implement/adapt the necessary complaint and redress mechanisms and recurrent costs to monitor compliance, enforce and manage complaints. The costs for **financial providers** are estimated at between EUR 585 million and EUR 812 million for the same period and include significant one-off costs (adaptation of systems, training of staff) and recurrent costs with providing pre-contractual information and comply with the right of withdrawal, which are eventually passed on to consumers. The quantifiable benefits of the Directive relate to the **reduction of the consumer personal detriment** (financial and time losses) and estimated to be between EUR 678-1,263 million for the period 2004-2018.

The **benefits** of the Directive to consumers appear to be **proportionate to its costs**, according to the economic model developed and the stakeholders consulted. They have **remained relatively stable** throughout time due to two opposite forces. The constant and significant increase in purchases of financial services at distance (upward force) and the introduction of other EU horizontal and product-legislation that significantly overlaps with the Directive (downward force). **Currently, the key provision with a higher cost-benefit ratio is the right of withdrawal.** Until 2016, the provision with the highest net benefit was the one on pre-contractual information. Since then, the net benefits of this provision have dropped considerably, following the introduction of overlapping product-specific legislation.

Data gathered from stakeholders and studies indicates that there is **some scope for simplification and burden reduction.** This includes **streamlining the EU legal framework for financial services** and addressing aspects related to the process, means and format through which information is provided and presented to the consumers.

The overlap between horizontal and product-specific legislations has not caused additional costs because with the successive introduction of product-specific legislation, the impact of the Directive on recurring costs diminished. In fact, industry stakeholders attribute most of their current compliance costs to other EU horizontal and product specific legislation as opposed to the Directive. Such overlap might have led to additional burden (e.g. duplication of the information provided) but the evaluation could not quantify it.

The **data collection** carried out for the evaluation has a number of **limitations** (e.g. as regards data on the state of the distance marketing of financial services and its evolution since 2002, problems faced by consumers and associated detriment and costs) whose impact has been **mitigated to a maximum possible extent.**

#### *Directive's added value*

The **added value of the Directive remains considerable** despite the decline in its value over time following the entry into force of product-specific legislation. It establishes a minimum level of consumer protection across the Member States in a way that is **flexible enough to be applied to new products and circumstances thanks to its product neutrality and technology neutrality ('safety net' role).** For example, insurances are the most popular financial activity carried out online and the second most popular financial services contracted in another EU country (together with credit cards and investments), but product specific legislation applying to insurances introduces a right of

withdrawal only for life insurances, while the Directive's right of withdrawal applies to all kinds of insurance sold at distance.

Furthermore, there is an **increasing demand for cross-border financial services that is often unmet** due to limitations of offers to domestic customers. **Digitalisation** of financial services could **allow a reduction in costs** and lead to increased **cross-border selling of financial services online**. Hence the **added value of the Directive**, as a 'safety net' covering specific elements for some financial services as well as new products, **would increase**.

## **Annex 1: Procedural information**

### **LEAD DG, DeCIDE PLANNING/CWP REFERENCES**

- LEAD DG: DG JUSTICE AND CONSUMERS
- DeCIDE PLANNING: PLAN/2018/4638
- CWP 2019 – ANNEX II (REFIT INITIATIVE N.10)<sup>364</sup>

### **ORGANISATION AND TIMING**

The evaluation took place between December 2018 and November 2019, following its announcement in 2019 Commission Work Programme.

The evaluation has been carried out by Unit E1 "Consumer Policy" of the Commission, DG Justice and Consumers.

Representatives from the Secretariat General, the Legal Service, DG Financial Stability, Financial Services and Capital Markets Union (FISMA), DG Competition (COMP), DG Internal Market, Industry, Entrepreneurship and SMEs (GROW) and DG Communications Networks, Content and Technology (CNECT) were appointed to the Steering Group.

The Inter-Service Steering Group met 5 times from December 2018 and December 2019.

### **EXCEPTIONS TO THE BETTER REGULATION GUIDELINES**

The Better Regulation Guidelines and Toolbox were followed without any exceptions.

### **CONSULTATION OF THE REGULATORY SCRUTINY BOARD**

The evaluation was selected for scrutiny by the Regulatory Scrutiny Board ('the Board'). The RSB received the draft version of the evaluation Staff Working Document on 20 December 2019. Following the hearing which took place on 29 January 2020, the Board issued a positive opinion on the Evaluation.

In its opinion, the Board finds the Evaluation report (i.e. the Staff Working Document) to be informative and well put together. Nonetheless, it considers that it should further improve with respect to several aspects.

The evaluation Staff Working Document was modified to address the Board's recommendations:

- Better show how the Directive provides EU value added.
- Better explain the rationale for and origin of overlaps with horizontal and product-specific legislation.
- Redraft the conclusions do not fully reflect the extended answers to the evaluation questions to draw clearer lessons from the evaluation exercise and structure them around the main themes of the evaluation.
- Better explore the availability and usability of data in the evaluation report.

For more details, see the below table.

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<sup>364</sup> [https://ec.europa.eu/info/sites/info/files/cwp\\_2019\\_publication\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2019_publication_en_0.pdf)



<b>Recommendations of the Board</b>	<b>How the recommendations were reflected in the Staff Working Document</b>
<p>1. The report should analyse to what extent it is appropriate to regulate these consumer rights at the EU level, given the continued absence of a single market for consumer financial services. It should investigate why and how EU regulation is more suitable than regulation at Member State level.</p>	<p>In the Staff Working Document (SWD) it is now highlighted why it makes sense to have harmonised consumer protection rules in the national markets, especially considering that digitalisation will accelerate the internal market integration.</p> <p>Equally the EU added value of the Directive is now better explained and elaborated upon. Such value remains considerable, despite its decline over time following the entry into force of product-specific legislation. This is because it establishes a minimum level of consumer protection across the Member States, in a way that is flexible enough to apply to new products and circumstances, thanks to its product and technology neutrality ('safety net' role).</p> <p>Specific parts of the Report were redrafted to duly reflect the above considerations:</p> <ul style="list-style-type: none"> <li>- Section 1: Introduction;</li> <li>- Section 2: Background to the intervention;</li> <li>- Section 3: Implementation - State of play;</li> <li>- EQ14 on the added value and consolidation of the internal market;</li> <li>- Conclusions and lessons learnt.</li> </ul>
<p>2. The report could clarify how the Directive positions itself within the EU legal framework to promote the internal market for financial services. It could elaborate on the relevance of this objective and explain the obstacles that stand in the way of cross-border distance selling of financial services. It could also clarify which obstacles the Directive aims to remove (and which it did), which</p>	<p>Regarding the internal market objective, cross-border market is expected to expand in the light of digitalisation. Therefore it is even more important to remove any obstacles and to further achieve the level playing field between creditors, with the ultimate goal to achieve the better functioning of the internal market.</p> <p>Regarding the links and overlaps with horizontal and sector-specific legislation, the SWD now better explains the overlap issue between the DMFSD and other horizontal EU consumer protection legislation. There is a significant degree of overlap between the provisions of the Directive and other product specific EU laws, potentially leading to information overload, but only minor inconsistencies.</p>

<p>obstacles remain and to what extent they can be tackled by this Directive or other initiatives. Furthermore, the report could map in a clearer way (in one single section) the links and overlaps with horizontal and sector-specific legislations. It could provide information on the genesis of the various legislation and explain why sector-specific consumer protection rules were considered more appropriate than the more general ones of this Directive.</p>	<p>Regarding the presentation of the text, in the SWD there is a comprehensive coherence section. However, the interaction with other product-specific legislation was also pertinent for the assessment of the relevance, effectiveness and efficiency of the Directive's provisions, so references have been added throughout these sections too.</p> <p>See in that regard in particular under:</p> <ul style="list-style-type: none"> <li>- EQ1: Objective 1;</li> <li>- EQ2 on whether the DMFSD is relevant in light of legal developments occurred since its adoption;</li> <li>- EQ4 on whether the achievements be attributable to the adoption of the Directive;</li> <li>- EQ7 on the costs and benefits attributable to the Directive as opposed to product-specific legislation;</li> <li>- EQ12 on overlaps, inconsistencies and gaps with EU product-specific legislation;</li> <li>- Conclusions and lessons learnt.</li> </ul>
<p>3. The conclusions should draw clearer lessons from the evaluation exercise. They should flag specific issues for policymaker attention in the future. They could also discuss the potential to streamline or simplify the broader regulatory framework in which the Directive functions. The conclusions (and similarly the executive summary) could be structured around the main themes of the evaluation.</p>	<p>Both the conclusions (Section 6 of the Evaluation report) and the executive summary (standalone document) have been extensively redrafted in order to show and highlight the key issues identified that will possibly need addressing in the context of a DMFSD review in the future.</p> <ul style="list-style-type: none"> <li>- The conclusions (section 6) now clearly focus on the areas where the DMFSD is still fit for purpose and areas which require further efforts to harvest its benefits.</li> <li>- The executive summary (standalone document) was substantially restructured in order to present the main findings of the evaluation in a simple, succinct and reader-friendly manner, bringing out the main lessons learned from this evaluation.</li> <li>- The findings are no longer presented separately under the five better regulation criteria, but they are thematically organised.</li> </ul>
<p>4. The report could better reflect the available evidence base, as included in the annexes and the external support study. It could better explain the data limitations and how these affect the</p>	<p>For the consumer survey, Annex 2 now provides more information on the methodology, the sampling and the reliability of the results.</p> <p>References were added to the internet and the dot-com era in Section 2.</p>

<p>conclusions. It could more strongly point to the weak impact of the internet and telecommunications on the internal market for financial services.</p>	
<p>5. The report could further explore the problems with compliance and whether some enforcement measures have been more effective than others. The report could also describe whether there are overlaps between enforcement bodies stemming from related consumer protection legislation and what impact this has had.</p>	<p>Data suggests a reasonable level of compliance with the key provisions of the Directive. The compliance levels are not the same for all provisions, though. These facts are now clearly presented in the text.</p> <p>For the above see EQ3 and EQ6, as well as Conclusions.</p>
<p>6. The report could be more explicit about the (limited) burden stemming from the Directive. It should elaborate on the extent to which the overlaps with other legislation affect this burden.</p>	<p>The benefits of the DMFSD to consumers appear to be proportionate to its costs, according to the economic model developed by the contractor and the stakeholders consulted. Data gathered from stakeholders and studies indicates that there is some scope for simplification and burden reduction. EQ8 and Conclusions have been accordingly updated to properly highlight that.</p> <p>The overlap between horizontal and product-specific legislations has not caused additional costs because with the successive introduction of product-specific legislation, the impact of the Directive on recurring costs diminished. In fact, industry stakeholders attribute most of their current compliance costs to other EU horizontal and product specific legislation as opposed to the Directive. EQ7 and Conclusions have been accordingly updated.</p>

## **EVIDENCE, SOURCES AND QUALITY**

The evidence findings of an external support study prepared by ICF (Support study for the evaluation of Directive [2002/65/EC](#)) fed into the analysis of this SWD. The study was carried out under close guidance of DG JUST. As such, the content of this SWD does not deviate from the support study but only synthesizes its main findings to fit with the length requirements of evaluation SWDs.

The evidence collection for the SWD is also based on the Commission's experience in monitoring and implementing the Directive.

## Annex 2: Stakeholder consultation – Synopsis Report and List of stakeholders consulted

### 1. Introduction

This annex presents an overview of all stakeholders' activities conducted as part of the 'Evaluation of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services'. The consultation sought to collect information and feedback on the market of financial services sold at distance in the EU and on various aspects of the Directive (and other relevant legislation) from a wide range of key stakeholders. The stakeholder consultations sought to obtain feedback to assess the relevance, effectiveness, efficiency, coherence and added value of the Directive.

The consultation strategy relied on a mix of methods and tools to ensure a comprehensive and representative collection of views and experiences in respect of the functioning of the Directive. The tools and methods used were complementary and reached out to all relevant stakeholders:

- An open public consultation in two parts: one for general public (e.g., consumers) and another for all other EU stakeholders, including EU and national authorities, EU and national consumer associations, EU and national business associations, financial providers and NGOs;
- Targeted stakeholder consultations, which took the form of surveys and interviews with a variety of stakeholders, namely EU and national authorities, EU and national consumer associations, EU and national business associations and financial providers;
- A consumer survey to collect their views of their experiences in searching for and purchasing financial services at distance.

0 summarises the range of stakeholders consulted as part of the evaluation, in line with the consultation strategy. 0 provides an overview of the number of stakeholders consulted.

#### *Stakeholder group and data collection method*

Stakeholder group	Open Consultation	Public	Targeted stakeholder consultation	Consumer survey
EU and national industry representative	■		■	
EU and national consumer representatives	■		■	
Financial providers and representatives	■		■	
Consumers	■			■
EU and national authorities	■		■	
Other (NGOs, research organisations, etc.)	■			



## Overview of the target interviews and surveys carried out

Stakeholder group	Responses submitted to the Open Public Consultation	Interviews and surveys
EU and national industry representative	26	21
EU and national consumer representatives	9	14
Financial providers and representatives	17	8
EU and national authorities	17	28
Consumers	39	1,043
Other	6	-

## 2. Overview of consultation activities

This section provides an overview of the three key consultation activities: the Open Public Consultation, targeted interviews and surveys, and the consumer survey. In addition, several stakeholders provided their views on the evaluation roadmap and sent *ad hoc* contributions as position/opinion papers.

### Open public consultation

The Open Public Consultation carried out by the Commission aimed to gather the opinions of all stakeholder groups on the relevance, effectiveness, efficiency, coherence and EU added value of the Directive since its implementation in 2004, in order to collect evidence on whether the Directive remains fit for purpose and to identify priority areas for improvement.

The Open Public Consultation questionnaire consisted of 27 questions, split into two distinct parts. The first part (12 questions) targeted the general public (i.e. consumers) and the second part (15 questions) targeted key stakeholders involved in the implementation of the Directive or who have detailed knowledge of the functioning of the different elements of the DMSFD and their impact on the market of financial services sold through distance means of communication.

The consultation was advertised through the Directorate-General for Justice and Consumers' (DG JUST) social network accounts. An email was also sent to the relevant expert groups of DG JUST representing consumer organisations<sup>365</sup>, financial services users<sup>366</sup> and Member States' national authorities, informing them of the Open Public Consultation and inviting them to publicise the survey to their respective audiences. Stakeholders could respond in any of the EU languages.

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<sup>365</sup> European Consumer Consultative Group.

<sup>366</sup> Financial Services User Group.

The Open Public Consultation ran between 9 April and 2 July 2019. It received 114 responses, the majority of which came from EU citizens (38), followed by business associations (26). Other respondents included public authorities (17), company/business organisations (17), consumer associations (9) NGOs (2), academic/research institutions (2) and other respondents (3). Nineteen position papers were also received.

#### Targeted stakeholder consultation

Interviews and surveys were carried out with a range of relevant stakeholders at EU level and across Member States.

The number of stakeholders contacted was significantly higher than the final number interviewed and surveyed, which may reflect a degree of ‘stakeholder fatigue’ or lack of availability (many of the consultations took place during the summer period).

The deadline for interviews and surveys was gradually extended to 21 September 2019 (from mid-August) in order to allow more stakeholders to respond.

#### Consumer survey

The consumer survey ran from 6-30 August 2019. The online survey took approximately 15 minutes to complete and targeted consumers in eight Member States (Czechia, Finland, France, Germany, Italy Netherlands, Poland and Sweden). A total of 1,043 consumers<sup>367</sup> responded in their own language, providing first-hand information on their experiences of searching and buying financial services at distance.

The consumer survey questionnaire consisted of 21 questions split into three distinct parts. The first part (five questions) covered consumers’ characteristics, the second (14 questions) dealt with consumers’ experiences of searching for retail financial services, and the third (seven questions) probed consumers’ experiences of purchasing financial services online.

### **3. Methodology**

#### Targeted stakeholder consultation

EU and national industry representatives were selected in order to cover the whole range of financial services sold using distance means of communication, as well as views from both financial incumbents and non-traditional providers (e.g. FinTechs) in a proportionate way. EU and national consumer associations were selected to ensure that the consultation would cover as many Member States as possible. Financial providers were selected after an extensive search of providers in all Member States that offered financial services sold using distance means of communication. Again, the group of financial providers contacted included incumbents and non-traditional providers and covered the whole range of financial services sold using distance means of communication.

Responses were gathered via semi-structured interview (four semi-structured questionnaires were drafted for each group of stakeholders) or online survey (four targeted surveys were developed for each group of stakeholders).

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<sup>367</sup> 21% more than initially foreseen in order to compensate for the relatively low response rate of consumers to the Open Public Consultation.

## Consumer survey

The consumer survey ran from 6-30 August 2019. The survey was carried out online and targeted consumers in eight Member States<sup>368</sup> (Poland, Czechia, Sweden, Finland, France, Italy, Germany, the Netherlands). Consumers answered the survey in their own language, which gathered first-hand information on their experiences of searching and buying financial services at a distance. A minimum of five answers per type of financial product/service per country was set in order to ensure that the survey covered all types of products in all countries. There were 1,043 answers in total for the consumer survey. The percentage of respondents per country was defined based on the overall population of the country<sup>369</sup>.

The consumer survey was carried out by Dynata a company with a reach that encompasses 62 million consumers and business professionals globally and with an extensive library of individual profile attributes collected through surveys. The company provides robust survey services and solutions that ensure precise, trustworthy quality data.

Dynata's online sample consists of different proprietary panel brands across the globe and almost all panellists are re-contactable. All survey participants go through rigorous quality controls before being included in any sample.

For further details on the reliability of the results, on the survey questionnaire, on sourcing and on quality control procedures, please consult the evaluation supporting study Annex 4.4. Results of stakeholder consultations per activity and how they fed into the evaluation.

## Comments on roadmaps

Seven stakeholders provided feedback on the roadmap on the Evaluation of the Directive, including: three business associations (European Federation of Insurance Intermediaries (BIPAR), European Banking Federation (EBF), and Insurance Europe); three public authorities (Danish Competition and Consumer Authority, Danish Financial Supervisory Authority and Belgian FPS Economy); and one NGO (Finance Watch). The business associations and the two Danish authorities highlighted the need for the evaluation to examine coherence between the Directive and newer sector-specific legislation, such as the Insurance Distribution Directive (IDD), the Regulation on the Packaged Retail and Insurance-based Investment Products, the General Data Protection Regulation (GDPR), the Consumer Credit Directive (CCD) and the Mortgage Credit Directive (MCD). The Danish authorities and EBF further commented on the need for standardisation and harmonisation of the different pieces of sector-specific and horizontal legislation relating to financial services. For example, the Danish Competition and Consumer Authority highlighted that streamlining and simplification of the Directive, particularly in relation

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<sup>368</sup> The countries targeted in the consumer survey were selected so as to cover the two countries with the highest incidence of online sales of financial services (in absolute terms) in each of the four regions as adopted by the UN (Eastern Europe, Northern Europe, Southern Europe, Western Europe). Survey response targets for each country were based on the size of the population of each Member State.

<sup>369</sup> The majority of respondents (26%) were aged between 35-44 years, followed by 45-54 years (23%) and 25-34 years (22%). Only 2% of respondents were aged between 65-74 years and there were no respondents over 75 years. 55% of respondents were female and 45% were male.

to information requirements in product-specific legislation, could help to reduce the administrative burden for financial providers.

BIPAR and FPS Economy commented on the need to evaluate whether the Directive is still fit for purpose in light of digitalisation. FPS Economy raised the question of whether new technological tools developed in the financial services sector might help to encourage more cross-border activity and thus overcome the 'national reflex' of European consumers. The EBF noted that new banking products such as peer-to-peer lending should be better regulated to ensure consumer protection.

Finance Watch suggested looking further into how correct information on products and services can be provided to consumers, along with advice, creditworthiness and strong compliance with GDPR. Insurance Europe and the Danish Competition and Consumer Authority were concerned that too much information is already provided to the consumer.

These comments were subsequently taken into account in the evaluation, for instance when carrying out desk research and literature review or in the development of questionnaires.

### Open public consultation

#### **Part I - Consumers**

- Information provided on the financial service acquired: almost all of the respondents stated that they had received enough information on the provider (96%) and on the service acquired (100%). The majority found that the information provided was suitable for the device they were using. Respondents were slightly less satisfied with the structure and clarity of the documents received and with the time available for review of the information.
- Reasons not to complete the financial service transaction: 80% of consumers were uncomfortable with the level of information provided, finding it either incomplete, complicated, or unclear. 78% stated their preference for face-to-face contact at a physical branch of the provider when finalising the transaction.
- Importance of the rights granted by the Directive when purchasing at a distance: i) information about the main characteristics of the service, including any associated costs (92%), ii) information about the provider (85%), iii) right of withdrawal (76%).
- Most valued information elements: the majority of respondents considered all pieces of information important. Information on price - including all possible fees and charges - as well as the description of the service provided were considered very important (92%). Fewer respondents noted that other information was important, such as out-of-court redress mechanisms (51%), language of the contract (58%) and information on the applicable law (55%).
- Presentation of information: the majority of respondents considered all elements of presentation to be very important, with most preferring presentation that enabled them to compare products (76%) or that is adapted to the channel used (71%).
- When information should be presented: almost all respondents (95%) agreed that the information they considered important should be provided by default, for instance on the product page or the provider's website, regardless of whether they wish to purchase it. The majority (58%) noted that information should be provided well before the contract was signed.

- Cross-border purchases: close to one-third claimed to have already bought cross-border or tried to do so (32%), while 11% claimed to be satisfied by domestic offers or to prefer face-to-face contact (11%). The main reasons for not pursuing a cross-border transaction were doubt about their rights or where to turn in case of a problem (25%), followed by language barriers (23%).
- Cross-border purchase experiences: only 26% of respondents obtained the product and were satisfied with the outcome. In 60% of cases, the transaction was not possible because access to the website was blocked (20%), it was not possible to complete the transaction (16%) or consumers were redirected to the website specific to their country of residence (15%).

## Part II – Other stakeholders

- On the **relevance** of the Directive: the majority of industry stakeholders and public authorities (from 50-100%, depending on the specific aspect covered) considered the provisions, technology-neutral approach and horizontal scope of the Directive either totally or somewhat relevant. By contrast, the majority of consumer associations considered most of those aspects somewhat irrelevant, with the exception of requirements on providing information about the services, conditions and supplier and the horizontal scope of the Directive.

When justifying their responses about the less relevant aspects, stakeholders pointed to the regulatory overlap with more recent EU horizontal and product-specific legislation. More than half of the respondents from all groups felt that there are issues that the current formulation of the Directive fails to address. These include the quality of consumer information and advice provided by financial providers, consumer privacy and profiling, the transposition options of Member States, better clarity on the Directive interplay with product-specific legislation and on some of its concepts (e.g. ‘in good time’ and ‘durable medium’).

- On the **effectiveness** of the Directive: most respondents from public authorities and industry stakeholders indicated that all surveyed aspects/features (i.e. the provisions contained in the Directive, the level of harmonisation of national legislation, the technology-neutral approach of the Directive and its horizontal scope) were very or somewhat effective (between 55-100% of respondents, depending on the specific aspect covered). The majority of consumer associations, however, noted that most of those aspects were somewhat ineffective, with the exception of requirements on providing information on the supplier, the existence of a right of withdrawal and the horizontal scope of the Directive.

Two main reasons were provided by stakeholders to justify their responses. Firstly, overlaps and incoherence between the Directive, horizontal and product-specific legislation at EU and national legislation, and secondly, concerns about the effectiveness of enforcement of particular features, notably information disclosure requirements, unsolicited communication and service bans.

- On the **efficiency** of the Directive: the majority of industry stakeholders considered the information requirements, the existence of a right of withdrawal and the ban on unsolicited communications as somewhat costly (48-73%), while the ban on unsolicited services was not considered costly (43%). Most public authorities stated that all key requirements of the provision are not costly. The majority of stakeholders from all groups (26 of 43) considered all key requirements of the Directive very or somewhat beneficial, and mostly attributable to the Directive directly. Ten noted that



product/sector specific legislation is more recent and thus plays a greater role than the Directive. Most respondents were positive on the cost-benefit analysis (49%), with only 18% expressing a negative view. All consumer associations considered the benefits of the Directive to outweigh its costs.

- On **burden reduction and simplification** of the Directive: about 20% of the respondents stated that there is no room for simplification and reduction of costs associated with the Directive. The remaining 80% suggested some areas for burden reduction and simplification, chief among which were: simplification of the information to be provided to customers (seven respondents from across all groups except consumer associations); elimination of the requirements of the Directive that are not specifically related to distance selling channels (five industry stakeholders); tailor the Directive to refer to other applicable legislation (nine industry stakeholders) to avoid duplication of information and disclosure requirements with other European and national legislation.
- On the **coherence** of the Directive with key EU horizontal and product-specific legislation (i.e. Geo-blocking Regulation, electronic commerce Directive (ECD), ePrivacy Directive (EPD), General Data Protection Regulation (GDPR), Unfair Contract Terms Directive (UCTD), Unfair Commercial Practices Directive (UCPD), Alternative investment fund managers Directive (AIFMD), Prospectus Regulation, EU Regulation 1286/2014 on packaged retail and insurance-based investment products (PRIIPS), the Undertakings for the collective investment in transferable securities Directive (UCITS), the Market in Financial Instruments Directive (MiFID), the Insurance Distribution Directive (IDD), Payment Services Directive (PSD), the Mortgage Credit Directive (MCD) and the Consumer Credit Directive (CCD): a significant share of industry stakeholders were unable to assess the coherence of the Directive with the relevant EU legislation. Of those that could, a substantial majority considered the Directive somewhat coherent with all listed legislation. More than half of the consumer associations considered the Directive very coherent with most of the listed EU legislation. The exceptions were: Geo-blocking Regulation, ECD, EPD and PSD, which were believed to be somewhat incoherent with the Directive. The majority of the public authorities struggled to assess the coherence of the Directive with the Geo-blocking Regulation, the ECD, the EPD, the GDPR, the AIFMD, the UCITS and the IDD. Of those that could, however, the majority considered those pieces of legislation somewhat coherent with the Directive. With respect to the remaining pieces of legislation, the overwhelming majority considered them very or somewhat coherent with the Directive. The CCD, the MCD, the UCTD and the UCPD were largely considered to be very coherent with the Directive.
- On the **EU added value** of the Directive: the majority of stakeholders agree that the Directive brought high or medium added value (over and above what could reasonably have been expected from national legislation in the Member States alone) in all surveyed aspects, namely: helping to address cross-border problems (about 60%), legal clarity (about 65%), better functioning of the single market (about 70%) and better consumer protection (about 85%). Some minor divergences were evident between consumer associations and industry stakeholders. While 43% of the industry stakeholders noted that the Directive had a low added value in the context of legal clarity, consumer associations assessed this added value as medium or high. By contrast, while 50% of the consumer associations consider the Directive to have a low

added value on the functioning of the single market, 74% of industry stakeholders considered the Directive to provide medium-high added value here.

On the added value of the Directive compared to product-specific legislation, half of the respondents (10 from public authorities, seven from business associations, five from company/business organisations, three from consumer associations and one academic/research institution) reported that the Directive brought additional value compared to product-specific legislation, mostly due to its nature as umbrella legislation and its technology-neutral approach. Twelve respondents (five from business associations, four from company/business organisations and three from public authorities) noted that the Directive brings limited added value when compared to product-specific legislation because of duplication and overlap with that product-specific legislation. Nine respondents (four from business associations, three from company/business organisations, one NGO and one EU citizen) indicated that the Directive did not bring any added value because product-specific rules make the provisions of the Directive no longer relevant.

### Targeted stakeholder consultation

#### **Relevance**

- An overwhelming majority of business and consumer associations and national authorities (80%) stated that the Directive meets current challenges and needs to some extent (45%) or completely (35%). Consumer associations had more difficulties in expressing an opinion (38%) and were also the least positive about the relevance of the Directive (although the majority was still positive).
- Some stakeholders noted that there are several gaps not properly addressed by the Directive:

Digitalisation has led to faster selling procedures, and consequently, to more impulsive purchases. A reflection period or an opt-in period instead of the current right of withdrawal would better address this, in the opinion of three public authorities. The procedure to exercise the right of withdrawal should not be burdensome (two public authorities).

Some consumer biases are not (fully) addressed by the Directive and have become more relevant as a result of digitalisation (according to feedback received from five public authorities, four industry stakeholders and two consumer associations). The Directive should consider not only the amount of information but also the way in which that information is presented and provided to consumers (means, format and time) via the various digital channels (e.g. smartphone apps), as well as the challenges around explicit consent (for example, by regulating electronic signatures and the admissibility of some practices, such as pre-ticked boxes and product bundling<sup>370</sup>) and the quality and trustworthiness of the advice.

The Directive does not provide for specific provisions on the form of the distance contract, which could be adopted to ensure a level playing field among Member States (one public authority).

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<sup>370</sup> The offering or the selling of a credit agreement in a package with other 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.

- Some stakeholders (three public authorities, three industry stakeholders and two consumer associations) highlighted that some of the needs addressed by the Directive (e.g. unsolicited communications) are already covered by other, (often) more stringent EU horizontal and product-specific legislation. Nevertheless, most stakeholders believe the horizontal scope of the Directive to be important, as it is essential to ensure a minimum level of consumer protection for all types of financial services and to preserve a level playing field between distributors, intermediaries and potential emergent business models entering the market.
- The Directive would benefit from clarification of some definitions (three public authorities, one industry stakeholder and one consumer association) including: ‘in good time’, ‘durable medium’ and ‘financial service’ (e.g. to ensure that cryptocurrencies<sup>371</sup> and other similar products are covered by the Directive).

### **Effectiveness**

- Overall, around three-quarters of the consumer associations and two-thirds of the business associations are satisfied with the Directive’s contribution to the development of distance selling of financial services at national and EU level<sup>372</sup>. Only 8% (all consumer associations) indicated that they were not satisfied, mostly because of overlaps and inconsistencies with the product-specific legislation. Some stakeholders reported that was difficult to assess effectiveness, with one consumer association suggesting that the Directive should include indicators and define a process to monitor its effectiveness.
- The majority of stakeholders from all groups (77-100%) agreed that the Directive has contributed to increased consumer protection in the long run (public authorities are particularly positive about the role of the Directive in protecting consumer rights, and how it has worked well in practice (more than 75%)).

The majority of consumer and business associations (more than 55%, with only 6% disagreeing) stated that the Directive changed the provision of pre-contractual information, in practice.

Around three-quarters of stakeholders reported that the Directive provisions on pre-contractual information contributed to increased consumer confidence, knowledge and understanding of the services purchased, with only 3% disagreeing. Consumer associations held the least positive view of the effectiveness of pre-contractual information, with only 54% agreeing that those provisions have been effective (however, only 8% disagreed, while 38% were neutral).

Most stakeholders (69-88%) consider the right of withdrawal effective in helping consumers that change their minds about the products they have bought. Public authorities had the highest percentage of respondents that consider this provision effective (around 83%), followed by industry stakeholders (around 80%). Consumer associations and public authorities highlighted that consumers sometimes face various obstacles when exercising the right of withdrawal, including a lack of awareness of the right (e.g. because they were not informed about it).

A majority of stakeholders from all groups (more than 69%) felt that the Directive has contributed to protecting consumers against unsolicited communications and services to

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<sup>371</sup> A virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend.

<sup>372</sup> Stakeholder surveys and interviews.

some extent. All stakeholders considered the provision on unsolicited services more effective than that on unsolicited communications.

- On the effectiveness of the Directive in consolidating the single market:

More than half of the stakeholders stated that the Directive contributed to increasing the level of harmonisation or convergence between national legislation (35% neither agreed nor disagreed). Opinions varied among the three groups of stakeholders, however. Public authorities generally agreed (about 80%) that the Directive had a positive effect on the level of harmonisation of national laws, while only 40% of the business providers and consumer associations thought the same. 29% and 24% of business associations and consumer associations, respectively, believed that the Directive had no effect on the convergence of national law on distance marketing of financial services. Several mentioned that the possibility of regulatory choices allowed in the Directive led to discrepancies between national legislation.

Stakeholders had diverging views on the extent to which the Directive contributed to increasing cross-border distance sales of financial services, with most neither agreeing nor disagreeing (46%). The majority of public authorities tended to agree that it had a positive contribution.

About half of the stakeholders felt that the Directive contributed to increased competition and increased choice of financial services. The majority (54%) of consumer associations, however, did not take a position.

### **Coherence**

- About 15% of the stakeholders consulted (29% industry stakeholders, 15% consumer associations and 4% public authorities) stated that the Directive is not in line and coherent with legislation at EU level related to financial services or affecting financial institutions. Between 46% (consumer associations) and 88% (public authorities) indicated that, overall, the Directive is coherent with other EU legislation. 4-6% (depending on the stakeholder group and type of product) indicated inconsistencies between the Directive and product specific legislation, 6-14% that there are unjustifiable overlaps, and 2-8% that there are unaddressed gaps.

### **Efficiency and burden reduction and simplification**

- 41% of industry stakeholders and 60% of consumer associations noted that the costs of implementation of the Directive are proportionate to its benefits. Only 12% of industry stakeholders disagreed, while 47% of industry stakeholders and 40% of consumer associations neither agreed nor disagreed. Industry stakeholders consider the provision of information particularly burdensome, as they had to adapt their systems and products.
- Most stakeholders (58%) did not express their views on opportunities for simplification. Of those that did, most indicated that such opportunities exist, chiefly because of the scope to clarify the interplay between the Directive and other EU legislation.

### **EU added value**

- An overwhelming majority of stakeholders from all groups (more than 85%) stated that there is an added value in adopting EU-level legislation (compared to national legislation) in the area of financial services to ensure a higher level of consumer protection.

## Consumer survey

The main results of the consumer survey are as follows:

- On searching and finalising a distance purchase: three-quarters of the consumers searched for financial services on the internet, 12% by post and 12% via a phone call. 33% had not purchased products, while 47% finalised the transaction using a distance mean of communication and 19% finalised it face-to-face with the provider. The main reasons why consumers decided not to conclude a distance contract were concerns about the provider not having a physical branch (43%), the unsuitability of the service (25%) and the insufficiency of the information provided (15%). Of those that finalised the purchases at distance in the last five years, the most common services purchased were insurance (31% of products), credit (27%) and payment accounts (15%). About 25% were purchased from a provider from another Member State. Regarding the last distant contract entered into by the respondents, 61% were negotiated over the internet (39% online and 22% by email), while 26% were negotiated over the phone.
- Cross-border: while about 90% of the respondents were quite or very satisfied with the possibility of buying financial services at a distance from various Member States, only 15% had purchased (or tried to purchase) financial services from another EU country, and 32% had not done it but were open to the idea in order to find better deals. Half of the respondents would not consider it because they were unsure about their rights and where to turn to get redress in case of a problem (36%), were satisfied with the services/conditions offered in their country (26%), preferred face-to-face contact (23%) and due to language barriers (15%). Of those that had tried to purchase financial services in another Member State, only 15% could access the offers and were satisfied with the outcome. Almost half (48%) did not manage to access the offer because they were redirected to the website specific to their country (29%), they did not manage to access the website (19%), they had problems understanding and comparing information (21%) or could not complete the transaction (3%).
- On the relevance/importance of the specific objectives of the Directive: an overwhelming majority (above 90%) of consumers considering purchasing financial services at a distance found it somewhat or very important a) to have the right of withdrawal from the contract, b) to receive information about the service, conditions and provider, c) not to have pre-ticked boxes adding services, and d) not to be contacted by the provider without their prior agreement. More than 60% felt that the first two aspects were very important. More than 92% of respondents believed that all specific information requirements imposed by Article 3 of the Directive were somewhat or very important in order to make a decision. In fact, for the majority of consumers, all pieces of information are very relevant, with the exception of information on options and procedures for small compensation claims, and information on the availability of guarantees.
- On the relevance of the presentation of the information: more than 86% of consumers considered it somewhat or very important that the information was presented prominently and immediately (54% considered it very important), in a format that enabled them to compare it with other products (49% considered it very important), in a way that is adapted to the channel of communication used (44% considered it very important) and so as to choose the format in which the information can be accessed (37% considered it very important).



- On compliance with pre-contractual information requirements: the overwhelming majority of the respondents reported having received information on the characteristics of the services (80% of cases), on the terms and conditions (about 80%) and on redress mechanisms (70% of cases). In about 77-80% of the cases, the information was provided spontaneously. A significant share of the respondents indicated that pre-contractual information was usually provided ‘in good time’, before the signature of the contract (in 38% it was provided on the website of the provider, while 31% received it more than 24 hours before signing).
- On the effectiveness of the information provided: respondents tended to agree with the statements on the quality and presentation of the information on financial services, with only 13-21% disagreeing and 23-31% being neutral. However, less than 20% strongly agreed that the information allowed them to make informed decisions, that the information on the service, their right of withdrawal and to complain and seek redress was adequate, and that the presentation of the information enabled them to compare products.
- On the effectiveness of the ban on unsolicited communications and services: 32% of the respondents reported having received unsolicited communications about retail financial services without giving their prior agreement. Of those that received unsolicited communication, 54% received unsolicited emails, followed by 44% who received unsolicited calls from salespersons. Automatic calling machines and SMS were received by 25% and 20% of respondents, respectively. Only 3% had issues with unsolicited services.
- On compliance with the right of withdrawal: of the 10% of consumers who cancelled the contract using their right of withdrawal, only 2% experienced problems.

#### Ad hoc contributions

Eight stakeholders (three industry stakeholders, four national authorities and the European Banking Authority (EBA)) sent *ad hoc* contributions to the evaluation, some of which were position papers and others were the completed Open Public Consultation questionnaire.

- **Relevance:** of the six stakeholders that provided an opinion on the relevance of the Directive horizontal scope, technology-neutral approach and key provisions, three considered most of those aspects totally or somewhat relevant, while three industry stakeholders considered most of the aspects somewhat irrelevant due to a number of more recent service and product-specific EU directives. Four stakeholders (one industry stakeholder, two national authorities and the EBA) highlighted the need to address issues related to the amount, presentation and provision of the information to the consumers (timely and adapted to the device) in order to make sure they read and understand it. One industry stakeholder believed there to be no significant difference between face-to-face communication and video calls. The EBA suggested that the Directive should ensure that the process of cancelling the right of withdrawal should not be burdensome and that pre-ticked boxes should not be allowed. One national authority mentioned that the Directive should cover aspects of consumer privacy.
- **Effectiveness:** of the six stakeholders that provided an opinion on the effectiveness of the Directive horizontal scope, technology-neutral approach and key provisions, five considered most of those aspects totally or somewhat effective, while one industry

stakeholder considered most of the aspects somewhat ineffective due to a number of more recent service and product-specific EU directives and lack of clarity on the right of withdrawal. Two industry stakeholders and two public authorities considered the effectiveness of the Directive to have been impacted by the existence of product-specific legislation.

- **Efficiency and burden reduction and simplification:** on the implementation costs of the Directive, views varied. One industry stakeholder considered the information requirements and the right of withdrawal very costly, while another considered them somewhat costly and a third not costly (except for the requirement regarding the provision of information over the phone). Other aspects were similarly considered not costly. Five stakeholders (three public authorities and two industry stakeholders) considered the Directive beneficial and noted that its benefits outweighed its costs. Of the remaining stakeholders, one business association disagreed while others provided no opinion.

Three public authorities mentioned that better coherence with other EU legislation could reduce the burden of the Directive on providers, with one national authority suggesting that simplification of the information requirements could be beneficial.

- **Coherence:** of the six stakeholders that provided an opinion on the coherence of the Directive with other EU legislation, five considered it somewhat coherent, while one industry stakeholder considered it somewhat incoherent (mostly due to the Consumer Rights Directive, whose Recital 32 encourages Member States ‘to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level’ to ensure a level playing field for all consumers and all contracts related to financial services). **EU added value:** of the five stakeholders that provided an opinion on the EU added value of the Directive, two national authorities considered it to be of high value (except the legal clarity, which had medium value), while industry stakeholders stated, variously, that its value was low (one stakeholder), medium for consumer protection and low for consolidation of single market (one stakeholder) and high, with the exception of legal clarity (one stakeholder).

#### 4. Overall results

The results of the various stakeholder consultations suggest some common ground and shared areas of concern among the various groups. The small number of divergent views is to be expected, given the different background and experiences of the various stakeholders.

- **Relevance:** overall, stakeholders from all groups considered the Directive relevant to some extent, as it provides a safety net to capture distance selling of any new financial services/products and ensures that a solid consumer protection framework is in place. Nevertheless, a considerable number of stakeholders indicated that a) some consumer behavioural biases and needs related to the amount, presentation and provision of the information (timely and adapted to the device) are not fully addressed by the Directive, and b) the implementation of EU horizontal and product-specific legislation since 2004 contributed to address consumer and providers’ needs originally addressed by the Directive and thus reduced the relevance of the Directive.
- **Effectiveness:** the majority of the stakeholders from all groups stated that the Directive contributed to a) increase consumer confidence, knowledge and

understanding of the products purchased, by encouraging sufficient information disclosure prior to the conclusion of the contract, and b) help consumers that changed their mind about the products they have bought. On the other hand, the objective of single market consolidation has been achieved to only a limited extent, as many barriers to cross-border purchases (from both consumer and supply side) are beyond the influence of the Directive. A significant share of stakeholders indicated that product-specific legislation has contributed to the achievement of those objectives as well.

- **Coherence:** most stakeholders from all groups noted that the Directive was somewhat coherent with other EU legislation. Nevertheless, a significant share were unable to assess coherence, while others reported the existence of inconsistencies, unjustifiable overlaps and gaps between the Directive and the other pieces of EU legislation.
- **Efficiency and simplification:** the majority of the stakeholders did not provide an opinion on the costs and benefits of the Directive. Of those that did, most agreed that the implementation of the Directive was somewhat costly but that its benefits outweighed its costs.  
Some stakeholders believe that there is space for burden reduction and simplification. Of those, the majority indicated that the EU legal framework on financial services should be harmonised. Other stakeholders suggested that reduction of burden/simplification could be achieved by simplifying the information provided and by better streamlining information throughout the customer journey. Limiting information overload, improving information readability and usefulness, they felt, would benefit consumers.
- **EU added value:** the stakeholders generally believe that the Directive has a high or medium level of added value, in particular in ensuring better consumer protection and better functioning of the single market. While the majority of industry stakeholders agreed, the agreement was higher among public authorities and consumer associations.

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## **Annex 4: Evaluation Questions**

### **Relevance**

EQ1: To what extent do the objectives of the Directive correspond to the initial and current needs of consumers and providers?

EQ2: To which extent is the Directive relevant in light of legal developments that have occurred since its adoption?

### **Effectiveness**

EQ3. To what extent have the objectives of the Directive been achieved?

EQ4. To what extent can the achievements be attributed to the adoption and implementation of the Directive?

EQ5. To what extent have Member States implemented and enforced the Directive?

EQ6. To what extent have financial service providers complied with the Directive?

### **Efficiency**

EQ7. What are the costs and benefits (monetary and non-monetary) attributable to the Directive as opposed to product-specific legislation?

EQ8. Are the costs of the Directive proportionate to the benefits generated (both monetary and non-monetary)?

EQ9. Are there opportunities to simplify the legislation or reduce unnecessary/disproportionate costs and burden on some stakeholders without undermining the effectiveness of the Directive?

### **Coherence**

EQ10. To what extent have the elements of the Directive worked together and between themselves?

EQ11. To what extent have there been synergies and/or overlaps with EU horizontal legislation (e.g., consumer acquis, geo-blocking, data protection rules, e-commerce Directive)?

EQ12. To what extent have there been overlaps, inconsistencies and gaps with EU product-specific legislation?

EQ13. Is the Directive coherent with national consumer protection legislation and product-specific legislation?

### **EU added value**

EQ14. What is the added value delivered by the Directive and its implementation over and above what could reasonably have been expected from national legislation in the Member States alone? Is there evidence of clear benefits from EU level action (e.g. in terms of the consolidation of the internal market)?

EQ15. What would be the most likely consequences of withdrawing the Directive assuming that product-specific legislation and horizontal legislation stays in place? Would the interests of consumers be significantly damaged?

## Annex 5: Legal analysis: transposition, infringements, case law and coherence

This Annex provides an overview of the transposition of the Directive (section 1), of the relevant infringements and case law (section 2), as well as of the legislation (both horizontal and product-specific) which has been considered in the course of this evaluation because of its interaction with the Directive (section 3).

### 1. TRANSPOSITION OF THE DIRECTIVE

The provisions of the Directive have been transposed into national legislation in all Member States. Although most replicated the provisions of Articles 3-10 literally, some Member States have laid down further rules to ensure more stringent guarantees for consumers. Eighteen Member States<sup>373</sup> made use of the regulatory choices set out in Articles 6(1)<sup>374</sup>, 6(3)<sup>375</sup> and 7(2)<sup>376</sup>. For more details see the support study to the evaluation.

According to Article 21 of the Directive, Member States should have implemented the Directive by 9 October 2004. However, by the end of 2004, only 11<sup>377</sup> Member States had brought into force the national laws, regulations and administrative provisions necessary to comply with the Directive. Most Member States actually transposed the Directive in 2005 and 2006. Spain<sup>378</sup> and Luxembourg<sup>379</sup> adopted the Directive only after the Court of Justice of the European Union (CJEU) had decided on infringement cases against them, transposing the text in July 2007 and December 2006, respectively.

#### *Pre-contractual information*

Article 3 of the Directive lays down a very detailed set of information that the seller must provide to the consumer before the conclusion of a distance contract. The framework is complemented by the provisions of Article 4 on additional information requirements, with paragraph 2 stating that Member States may maintain or introduce more stringent provisions on prior information requirements.

The legal analysis found that:

- All Member States transposed Article 3 correctly, with most implementing the measures verbatim. However, in some cases, the terminology was adopted in respect of the various legal traditions with no substantial changes in the content. Some Member States also give more detail, for additional clarity<sup>380</sup>.
- Most Member States made use of the regulatory choice set out in Article 4(2), either maintaining pre-existing national provisions or introducing more stringent measures on

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<sup>373</sup> BE, BG, HR, CY, DK, FR, IE, IT, LV, MT, NL, PL, PT, RO, SI, ES, SE, UK.

<sup>374</sup> CY, HR, IT, SI.

<sup>375</sup> BE, BG, DK, ES, FR, HR, IE, IT, NL, PL, PT, SE, UK.

<sup>376</sup> HR, LV, MT, PL, PT, RO.

<sup>377</sup> AT, CY, DK, EE, DE, LV, LT, PL, RO, SI, UK.

<sup>378</sup> Judgment of the Court of 19 April 2007, Commission of the European Communities v Kingdom of Spain, C-141/06, ECLI:EU:C:2007:236

<sup>379</sup> Judgment of the Court of 7 December 2006, Commission of the European Communities v Grand Duchy of Luxembourg, C-127/06, ECLI:EU:C:2006:769

<sup>380</sup> In Romania, Article 8 of GO 85/2004 specifies the moment of the conclusion of the contract: *the moment of conclusion of a distance contract concerning financial services is the moment when the consumer has received the confirmation message regarding his order.*

pre-contractual information. Some Member States foresaw additional requirements that service providers should supply in the pre-contractual phase.

In some Member States, the legislator decided that further information elements should be included at the pre-contractual stage.

The Romanian transposition, for instance, states that the provider shall communicate the pre-contractual information and conditions in good time before the user becomes part of an agreement or an offer, a timeframe that cannot be shorter than 15 days. The legislator also requires the provision of additional information related to the nature of the payment service, such as the form and procedure for expressing consent, the maximum term for performance, all of the coercive measures applicable to a payment instrument and the reimbursement provisions.

Spain and Sweden make use of the provision in Article 4(2), with measures to clearly identifying the financial services provider. In Sweden, the legislator states that the supplier shall provide the consumer with their telephone number or email address. Spain<sup>381</sup> also requires that where a representative of the supplier established in the consumer's Member State of residence intervenes, it is necessary to provide all the information contained in Article(3)(1)(1A), including their telephone number, fax number and, where appropriate, the consumer's email address.

Bulgaria<sup>382</sup> and Portugal<sup>383</sup> establish that the pre-contractual information, the terms of the contract and all other communications regarding the contract shall also be given to the consumer in their own national language.

Italy has introduced more stringent provisions on prior information requirements for financial services, as per Article 4(2). In particular, the service provider shall inform the consumer of the essential characteristics of the security requirements for the payment transaction and, in case of links with other financial services, they will expressly state the effects deriving from the eventual combination<sup>384</sup>. Slovenia establishes that any violation or non-disclosure of the pre-contractual information automatically constitutes unfair commercial practice, while Slovakia states that the obligation to inform the consumer can neither be overridden by invoking trade or professional secrets, nor limited or removed by contractual provisions<sup>385</sup>.

In implementing Article 4, Slovakia and Latvia both state that the obligations of the supplier to provide the consumer with other information on financial services under the special regulations<sup>386</sup> is not affected by the provisions of the transposing measures.

Article 5 of the Directive completes the legal framework laying down the rules on the communication of the contractual terms and pre-contractual information and was transposed correctly by all Member States. Article 5 paragraphs 1 and 2 establish that the service supplier is obliged to provide the pre-contractual information on paper or another durable medium available and accessible to the consumer in good time before they are

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<sup>381</sup> Article 7(1) of the Spanish ADMCFCS Act 22/2007 of 11 July on the Distance Marketing of Consumer Financial Services (see factsheet in Annex 8 of the study supporting the evaluation) available at: <https://www.boe.es/eli/es/l/2007/07/11/22/con>.

<sup>382</sup> Article 8(4) Distance Financial Services Act (see factsheet in the supporting study's Annex 8).

<sup>383</sup> Article 9 DL 95/2006 (see factsheet in the supporting study's Annex 8).

<sup>384</sup> Article 67-sexies Consumer Code (see factsheet in the supporting study's Annex 8).

<sup>385</sup> Article 6, Para 3 of GO 85/2004.

<sup>386</sup> Civil Code on insurance contracts; Securities Act on Investment Services Contracts.

concretely bound, or immediately after the conclusion of the contract if the means of communication used does not enable differently. Additionally, Article 5(3) allows the consumer, at any time during the contractual relationship, to receive, on request, the contractual terms and conditions on paper.

Many Member States<sup>387</sup> impose additional requirements in respect of communicating the contractual terms and conditions or impose a penalty where the obligation is not sufficiently met.

Greece, for example, provides for invalidation in favour of consumers in cases where the pre-contractual information is not received promptly. In any case, withheld contractual terms are not binding on the consumer, even if they were not crucial factors for the formulation of their contractual will<sup>388</sup>. Similarly, Malta and Spain provide that where the supplier has not fulfilled his/her obligations under Article 5 of the Directive, the distance contract shall be annulled at the consumer's request or itself nullified<sup>389</sup>.

### ***Right of withdrawal***

The right of withdrawal is expressly spelled out in Article 6 of the Directive. The Directive ensures that consumers have a period of 14 calendar days to withdraw from the contract concluded, without penalty and without the need for justification. Article 6(2) lists the categories of products that do not fall within the scope of the Directive, such as financial services whose price depends on fluctuations in the financial market outside the suppliers' control, travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration. Article 6(3) foresees a regulatory choice, allowing Member States to establish a set of exemptions to the right.

All Member States transposed Article 6 fully and correctly, except Czechia, which did not implement Article 6(2c).

Some Member States have further defined strict rules<sup>390</sup> on the right of withdrawal where the service provider does not fulfil their obligations on pre-contractual information and/or communication of the contractual terms.

Member States to ensure consumers' access to these rights provide with remedies against the service providers when there are specific problems with the distance financial products acquired. Croatia, for instance, expressly provides that if a trader fails to fulfil any of the obligations provided for pre-contractual information and communication on durable means, the consumer is entitled to rescind the contract at any moment, without paying any fee or damage. De facto, the mentioned provision indefinitely extends the right of withdrawal in cases where the trader does not fulfil their information duties. Similarly, the Bulgarian and Czech legislators provide that in such cases of negligence, the consumer has the right to withdraw from the contract one month after the expiration of the regular 14-day term, and within three months from the date on which he became aware or should and could have become aware of the false information, respectively. Germany foresees similar conditions, the right of withdrawal of the consumer expires at the latest 12 months and 14 days after the conclusion of the contract in case of deceptive information.

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<sup>387</sup> BG, FR, EL, MT, NL, RO, SK, ES.

<sup>388</sup> Article 4h (4.4a) Law 2251/1994

<sup>389</sup> Malta: Regulation 6(3) DS (RFS) Regulations; Spain: Article 9 of the Spanish ADMCFs Act 22/2007 of 11 July on the Distance Marketing of Consumer Financial Services (see factsheet in Annex 8 of the study supporting the evaluation).

<sup>390</sup> BG, HR, CZ, DK, DE, LV, PL, SI, ES.

In 2011, the Commission referred Italy to the CJEU for inadequate transposition of the Directive in respect of the right of withdrawal from a car insurance contract where an accident had occurred during those 14 days and the right was not guaranteed. In 2012, Italy amended the previous provisions and ensured the proper implementation of the Directive<sup>391</sup>.

Several Member States made use of the regulatory choices provided in Article 6(1) and 6(3)<sup>392</sup>. Croatia<sup>393</sup>, Cyprus, Italy and Slovenia all chose to apply the option set out in Article 6(1) by means of specific national provisions.

Bulgaria, Poland<sup>394</sup>, Portugal, Spain and the UK, as per Article 6(3a), established that the right of withdrawal does not apply to any credit intended primarily to acquire or retain property rights in land or an existing or projected building, or for renovating or improving a building.

According to Article 6(3b), Belgium, Denmark, France, Ireland Netherlands, Poland, Portugal, Spain, Sweden and the UK excluded the application of the right for any credit secured either by a mortgage on immovable property or by a right related to immovable property. Only Italy and Spain chose to apply the option set out in Article 6(3c).

Spain provides for additional exclusions of the right of withdrawal, which are not expressly foreseen by the DMSFD, such as pension plans, insurance contracts where the policy holder assumes the financial risk, insurance contracts whose effects finish before the withdrawal period, and insurance contracts that comply with a policy holders' obligation to insure.

Article 7 completes the legal framework on the right of withdrawal, setting out detailed rules on the payment for the service provided by the supplier before the consumer exercises their right. Paragraph 2 of Article 7 sets out a regulatory choice that allows Member States to exempt the consumer from paying any amount when withdrawing from insurance contracts.

All Member States transpose Article 7 almost literally, with only Croatia, Latvia, Malta, Poland, Portugal and Romania making use of the regulatory choice in Article 7(2).

On the other hand, Croatia and the UK have established further rules in this area. Croatia, in particular, sets out that the consumer is required to pay for the services already provided only if what they were given based on the contract cannot be returned. The UK states that the rule on the consumer's obligation to pay for the services de facto provided by the firm does not apply to distance contracts that concern life policies, personal pension schemes, cash deposit ISA, cash-only lifetime ISA or Child Trust Fund<sup>395</sup>.

### ***Ban on unsolicited communications and services***

Articles 9 and 10 of the Directive lay down rules on unsolicited services and communications, respectively. More specifically, Article 9 states that Member States shall take the measures necessary to prohibit the supply of financial services to consumers

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<sup>391</sup> Decree Law 18.10.2012, n. 179, converted into Law 17.12.2012 n. 221.

<sup>392</sup> BE, BG, HR, CY, DK, FR, IE, IT, NL, PL, PT, SI, ES, SE, UK.

<sup>393</sup> The Croatian legislator did not transpose Article 6 paragraphs 4, 5, 7, 8.

<sup>394</sup> Poland used the regulatory choice in an indirect way. According to Article 4(1) Act of 30 May 2014 on consumer rights (CRA), the entire act does not apply to contracts that concern ownership of immovable or other rights thereto. This encompasses the instances mentioned in Article 6(3)(a) and (b) of the Directive.

<sup>395</sup> Rule 15.4.2, Rule 15.4.4 and Rule 15.4.5 COBS (see factsheet in the supporting study's Annex 8).



without a prior request on their part where the supply includes a request for immediate or deferred payment. Article 10 requires the consumer's prior consent in cases where the supplier uses either automated calling systems or fax machines and states that such communications should be free of charge for the consumer.

Most Member States<sup>396</sup> transposed Articles 9 and 10 accurately, while others either chose not to implement them because of similar pre-existing national provisions<sup>397</sup>. Several Member States<sup>398</sup> foresaw more stringent rules.

Croatia, Finland and Sweden did not implement Articles 9 and 10 because pre-existing measures were already in place at the time of the adoption of the Directive. Similarly, the UK did not transpose Article 10, as a provision on unsolicited financial promotions was already established in the national regulatory framework<sup>399</sup>. By contrast, the Austrian legislator, in addition to the provisions of Article 9, states that when a consumer receives unsolicited material, they are not obliged either to keep or return it.

For Article 10, Italy also gives the option to any subscriber whose telephone number is listed in a public telephone directory and who wishes not to receive unsolicited direct marketing calls and postal mail, to object to such calls by registering in a specific register. Accordingly, the consumer's prior consent is not needed for personal processing data of subscribers that have not joined that register.

## 2. INFRINGEMENTS AND RELEVANT CASE LAW

### *Infringement procedures at European Level*

In 2006, the CJEU intervened to compel Spain<sup>400</sup> and Luxemburg<sup>401</sup> to adopt the national laws, regulations and administrative provisions needed to comply with the Directive, as the deadline for transposition was 9 October 2004. Both countries transposed the text of the Directive, in July 2007 and December 2006, respectively.

In 2011, the Commission found that Sweden had failed to fulfil its obligations under the Directive, introducing right of withdrawal provisions that went beyond those laid down in Article 7(1) of the Directive. The national legislation provided that if a consumer exercises his right of withdrawal, a trader could require the consumer to pay for that part of the financial service already supplied, as well as payment of reasonable costs for services relating to the time before the trader accepted the consumer's confirmation of their withdrawal.<sup>402</sup>

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<sup>396</sup> AT, BE, BG, CY, CZ, DK, DE, EL, HU, IE, IT, LV, LU, MT, NL, PL, PT, RO, SK, SI, ES.

<sup>397</sup> EE did not transpose Article 9 of the Directive. HR, FI, SE did not transpose Articles 9 and 10 of the Directive.

<sup>398</sup> AT, BG, DE, IE, IT, LV, MT, SI, ES.

<sup>399</sup> Promotions that are not in writing are generally covered by Rule 4.8.3 of COBS, banning both solicited and unsolicited financial promotions that are not in writing, to a client outside the firm's premises, unless the person communicating it clarifies whether the client would like to continue or terminate the communication and terminates such communication at any time at the client's request.

<sup>400</sup> Judgment of the Court of 19 April 2007, Commission of the European Communities v Kingdom of Spain, C-141/06, ECLI:EU:C:2007:236

<sup>401</sup> Judgment of the Court of 7 December 2006, Commission of the European Communities v Grand Duchy of Luxemburg, C-127/06, ECLI:EU:C:2006:769

<sup>402</sup> Press Release of 27 January 2011, Distance marketing of financial services: the Commission takes Sweden to the Court of Justice, [https://ec.europa.eu/commission/presscorner/detail/sw/IP\\_11\\_98](https://ec.europa.eu/commission/presscorner/detail/sw/IP_11_98).

Also in 2011, the Commission referred Italy to the CJEU for inadequate transposition of the Directive, concerning the right of withdrawal from a car insurance contract, whereby the right was not guaranteed if an accident took place during those 14 days.<sup>403</sup> In 2012, Italy amended the previous provisions and ensured the proper implementation of the Directive.

In addition, several requests for preliminary rulings were brought before the CJEU on the right of withdrawal<sup>404</sup>. Case C-301/18 revolves around the interpretation of Article 7(4) of the Directive, on the supplier's obligation to return to the consumer any sums they have received<sup>405</sup>. Case C-639/18 lodged another preliminary ruling question on the meaning that should be attributed to 'distance contract', as per Article 2(a) of the Directive<sup>406</sup>.

### ***Case-law at EU and national level***

There are a few instances of case law at **EU level** on the right of withdrawal, inertia selling and the definitions of 'durable medium' and consumer.

The 2019 judgment in case C-143/18 on the right of withdrawal clarified that Article 6(2)(c) of the Directive excludes the right of withdrawal where a contract has been fully completed at the explicit request of the consumer, and therefore any national provisions, law or jurisprudence on the right of withdrawal stating otherwise would be contrary to that provision and should be amended. In the same ruling, the Court clarified the concept of consumer, i.e. 'an average, reasonably well-informed and reasonably observant and circumspect customer, in accordance with Union law'.

In case C-375/15, the Court was asked to decide whether information given through an e-banking mailbox is 'provided' (as opposed to merely being 'made available') through a 'durable medium'. The Court ruled that the information transmitted by a payment service provider to the e-banking mailbox of the customer constitutes information on a 'durable medium'<sup>407</sup>. However, information concerning changes to a framework contract transmitted by a payment service provider solely through an e-banking mailbox were not considered 'provided' but merely 'made available' to a payment service user. The ruling was based on Article 44(1), in conjunction with Article 41(1) and Article 4(25) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market.<sup>408</sup>

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<sup>403</sup> Press Release of 29 September 2011, Distance marketing of financial services: Commission refers Italy to the Court of Justice, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_1091](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_1091).

<sup>404</sup> See e.g. Judgment of the Court of 26 March 2020, JC v Kreissparkasse Saarlouis, C-66/19, ECLI:EU:C:2020:242

<sup>405</sup> Judgment of the Court of 4 June 2020, Thomas Leonhard v DSL-Bank, C-301/18, ECLI:EU:C:2020:427

<sup>406</sup> Judgment of the Court of 18 June 2020, KH v Sparkasse Südholstein Case, C-639/18, ECLI:EU:C:2020:477

<sup>407</sup> 'Provided that the e-banking mailbox enables the payment service user to store information personally addressed to him in a way which is accessible for future reference for a period of time adequate in the light of the purposes of the information. It must furthermore allow the unchanged reproduction of the information stored, thus preventing the service provider from accessing, modifying or erasing that information. An e-banking mailbox can also constitute a suitable channel for the transmission of information in the form of electronic documents if those documents themselves comply with the requirements of being a "durable medium" and if such a system incites the user to electronically store and/or print those documents through an easily accessible function.'

<sup>408</sup> Judgment of the Court of 25 January 2017, BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG v Verein für Konsumenteninformation, Case C-375/15, ECLI:EU:C:2017:38

Finally, another case (C-49/11), in the context of Article 5(1) of Directive 97/7/EC but whose ruling refers to Article 2(f) of Directive 2002/65/EC, requests clarification on the concept of ‘durable medium’<sup>409</sup>. In 2012, the Court considered that making information accessible to the consumer only via a hyperlink to a website does not mean that that information was ‘given’ by that undertaking and ‘received’ by the consumer. Furthermore, the Court ruled that a ‘ordinary website’<sup>410</sup>, such as that at issue in the main proceedings, cannot be regarded as a ‘durable medium’ within the meaning of Article 5(1) Directive 97/7/EC nor Article 2(f) of Directive 2002/65/EC (that confirms the definition in that Article). The same approach was followed by the Court of the European Free Trade Association (EFTA) in Case E-4/09<sup>411</sup>, in interpreting the concept of ‘durable medium’ under Directive 2002/92.

In case C-639/18<sup>412</sup>, the CJEU replied to the question of whether a ‘contract concerning financial services’ within the meaning of Article 2(a) of Directive 2002/65/EC can be considered to exist, if an existing loan agreement is amended solely with regard to the agreed interest rate (follow-up interest agreement), without extending the term of the loan or altering the amount of the loan. It was ruled that the said Article must be interpreted as meaning that an agreed amendment to a loan agreement cannot be categorised as a ‘contract concerning financial services’, within the meaning of that provision, where the amendment does no more than alter the originally agreed rate of interest, but does not extend the term of the loan or alter its amount, and where the original clauses of the loan agreement provided for the agreement of such an amendment or, failing such agreement, the application of a variable interest rate.

In case C-301/18<sup>413</sup>, the CJEU replied to the question of whether Article 7(4) of Directive 2002/65/EC can be interpreted as precluding the legislation of a Member State that provides that, after withdrawal from a distance consumer loan contract has been declared, the supplier must also pay the consumer, beyond the sum he has received from the consumer in accordance with the distance contract, compensation for the benefit of use in respect of this sum. It was ruled that the said Article must be interpreted as meaning that, where a consumer exercises his or her right to withdraw from a distance loan agreement concluded with a supplier, that consumer has the right to receive from that supplier, subject to certain sums which the consumer himself or herself is required to pay to the supplier under the conditions laid down in Article 7(1) and (3) of that directive, the principal repaid and the interest paid under that agreement, but does not have the right to receive compensation for the benefit of use of that principal and that interest.

Regarding case-law at national level, the provisions of pre-contractual information and right of withdrawal are the legal obligations that have triggered most of the Directive - related case-law in the Member States.

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<sup>409</sup> Judgment of the Court of 5 July 2012, Content Services Ltd v Bundesarbeitskammer, Case C-49/11 ECLI:EU:C:2012:419

<sup>410</sup> ‘Content services refers to a 2007 report of the European Securities Markets Expert Group (ESME) that distinguishes between ‘ordinary websites’ and ‘sophisticated websites’ and that considers some sophisticated websites can constitute a durable medium.’

<sup>411</sup> Case E-4/09 *Inconsult Anstalt v Finanzmarktaufsicht* [2010], EFTA Court Report, p. 86.

<sup>412</sup> Judgment of the Court of 18 June 2020, KH v Sparkasse Südholstein Case, C-639/18, ECLI:EU:C:2020:477

<sup>413</sup> Judgment of the Court of 4 June 2020, Thomas Leonhard v DSL-Bank, C-301/18, ECLI:EU:C:2020:427

A relevant case was that of Bulgaria's Sofia Regional Court<sup>414</sup> on pre-contractual information on loans. The loans were given by a website with a Bulgarian domain that did not contain the address of its supervisory board and whose language for communication was not indicated. The court concluded that this constituted a minor violation of the national provisions transposing Article 3 of the Directive. However, the court stated that the incompleteness contested by the consumer was insignificant and did not affect his rights, nor did it compromise his right to decide whether the applicant company has an authorisation for the service offered by the competent supervisor. The court decided that that all of the essential information had been made public and revoked the administrative penalty initially imposed by the Consumer Protection Commission.

In 2013, in the Netherlands<sup>415</sup>, an association representing the interests of several investors took action against a company, complaining that an investment bank had violated the duties on information provision and misleading advertising because:

- the prospectus was not available via the company's website;
- the information provided was not understandable for an average consumer;
- the information was solely provided in English;
- the risks of the financial product were not detailed enough;
- the prospectus indicated that a second entity was responsible for guaranteeing the return on investment.

In conclusion, the court ruled that the information provision as a whole (form and content) was sufficiently understandable for an average, non-professional consumer and did not create wrongful impressions on the function and risks of the offered product.

In Slovenia<sup>416</sup> in 2018, a court was asked to rule on whether a credit institution<sup>417</sup> had provided enough information on the risks of a loan taken in a foreign currency. The court ruled that contract terms of a credit agreement need to be written in clear and understandable language, which means that financial institutions must provide the borrowers with information that is sufficient to make informed decisions. The court concluded that the information received at pre-contractual stage did not allow the consumer to understand the currency fluctuation risks and ruled that this was against the information obligations at the pre-contractual stage, which binds all business entities to provide detailed information that allows consumers to assess the potentially significant financial consequences of those fluctuations. In a similar case in Greece, the court also ruled that providers have a duty to give information to consumers on the dangers associated with the financial services/products.

In Bulgaria, the court was asked to rule on a case related to whether an activation of a confirmation link by a consumer - made available by the provider in the email sent to the consumer with the terms of the contract - could be considered explicit consent. According to the court, activation of a confirmation link is not sufficient to prove that the consumer was aware of the terms of the contract or that the consumer explicitly accepted them.

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<sup>414</sup> Decision No. 172218/14 July 2017 of Sofia Regional Court (Софийски Районен Съд).

<sup>415</sup> Court of Appeal, Amsterdam, 14 May 2013.

Available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2013:CA3906>

<sup>416</sup> VSL Sodba II Cp 1926/2017, 21 March 2018.

<sup>417</sup> 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.

Regarding Article 3 (3)(b) of the Directive, a German court ruled that when contacting the consumer by telephone, only the identity of the entrepreneur and the business purpose must be disclosed, not the identity of an employee calling on the entrepreneur's behalf, who is not himself an entrepreneur.

Regarding the definition of 'durable medium', an Austrian court clarified that such medium must enable the consumer to store the information for as long as this is relevant to safeguard their interests (time of contract negotiations, duration of the contract). The service provider's website must allow the unchanged reproduction of the stored information, with the consequence that the information stored cannot be unilaterally changed by the company<sup>418</sup>.

Some examples of national rulings on the right of withdrawal are:

- In Denmark, the court ruled that no right of withdrawal applies to agreements on securities or financial services if the price of the security or service depends on fluctuations in the capital market over which the supplier does not have influence and which may occur during the withdrawal period. Similarly, the Spanish Supreme Court (Civil Chamber) has ruled that the exclusion to the right of withdrawal applied to a swap contract concluded via phone.
- In Estonia, a court decided that a consumer must declare their intent to withdraw in a non-ambiguous form to the contract partner, otherwise the request is considered void.
- In Germany, a court ruled that the replacement of the loan before the withdrawal is declared does not preclude the effective revocation, thus the right of withdrawal as defined in the Directive still applies.

### 3. DESCRIPTION OF THE RELEVANT LEGISLATION CONSIDERED IN THIS EVALUATION

#### Horizontal legislation

**The Unfair Contract Terms Directive (93/13/EEC)** protects consumers against unfair standard contract terms in contracts concluded between a seller or supplier and a consumer. It applies to all contracts concerning the purchase of goods and the supply of services, for instance online or off-line purchases of consumer goods or financial services.

**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 (**e-privacy Directive (EPD)**) sets out rules to ensure security in the processing of personal data, the notification of personal data breaches, and confidentiality of communications. It also bans unsolicited communications where the user has not given their consent. EU countries are required to put in place a system of penalties, including legal sanctions for any infringements of the Directive. The scope of the rights and obligations of the EPD can only be restricted by national legislative measures where such restrictions are proportionate and necessary to safeguard specific public interests, for example national security, or to allow criminal investigations. The EPD affects the consumer credit, mortgage, insurance, payment accounts, investment products, payment services and personal pension sectors. The deadline for transposition of the EPD was 30 October 2003. The EPD interplays with the Directive in the context of Article 10 on unsolicited communications.

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<sup>418</sup> EFTA-GH, Urteil vom 27 January 2010, E 4-09.



Another important horizontal piece of legislation was **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 (**Unfair Commercial Practices Directive (UCPD)**). The objective of this Directive was to boost consumer confidence and make it easier for businesses - particularly small and medium-sized enterprises (SMEs) - to trade across borders. It enables national enforcers to limit a wide range of unfair business practices, such as providing untruthful information to consumers or using aggressive marketing techniques to influence consumer choices. The deadline for transposition of this Directive was 12 June 2007. The UCPD expressly replaces Article 9 of the Directive on unsolicited services and interplays with the Directive in the context of Article 10 on unsolicited communications.

A further legislative development was **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 (the **Consumer Rights Directive or CRD**). This Directive offers consumers the same rights across the EU for distance and off-premises contracts concluded between a 'consumer' and a 'trader'. It ensures the same level of harmonisation in all Member States with regard to the information requirements and the right of withdrawal from online or off-premises contracts. The Deadline for transposition was 13 June 2014. This Directive does not apply to contracts in the area of financial services, given the specificity of these services.

Also relevant is **Regulation (EU) 2018/302** of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (**the Geo-blocking Regulation**). This Regulation addresses the unjustified online sales discrimination which sometimes takes place based on customers' nationality, place of residence or establishment within the internal market, by banning the practice of geo-blocking. It applies from 3 December 2018 onwards. The Directive does not apply to access to retail financial services.

Lastly, another important piece of legislation is **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 (**the General Data Protection Regulation or GDPR**). The GDPR sets out harmonised data protection standard to provide EU citizens with more control over their own personal data and to improve their security online and offline. The GDPR is applicable since 25 March 2018. The GDPR interplays with the Directive in the context of Article 10 on unsolicited communications.

### Product-specific legislation

One product-specific development in the credit sector is **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 (**Consumer Credit Directive or CCD**). The CCD aimed to strengthen consumer rights and to help consumers to make



informed choices when signing up to a credit agreement. It stipulates that before a consumer signs an agreement, the lender<sup>419</sup> must provide the consumer with standardised information to make it easy for the consumer to compare offers. The lender should also state the annual percentage rate of charge (APR)<sup>420</sup>, which informs consumers of the total cost of the credit. In addition, the consumer can cancel the agreement within 14 days of its signature. The CCD interplays with the Directive on the provision related to pre-contractual information (Articles 3, 4 and 5) and right of withdrawal (Articles 6 and 7) in the context of consumer credits above EUR 200 and below EUR 75,000.

In the mortgage sector, there is **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 and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the **Mortgage Credit Directive or MCD**). The aim of this Directive is to ensure that all consumers who take out a mortgage to purchase a property are adequately informed and protected against the risks implied. The Directive applies to all loans made to consumers for the purpose of buying a home and it provides for better information to consumers on available mortgage products including an obligation on lenders to provide ESIS; a guaranteed period of reflection or a right of withdrawal and new EU-wide standards to assess the credit worthiness. This Directive applies since 20 March 2014 and had a transposition deadline of 21 March 2016. The MCD interplays with the Directive as it also regulates the provision of pre-contractual information (Articles 3, 4 and 5 of the Directive) and the right of withdrawal (Article 6) in the context of mortgages.

In the field of investment, an important piece of legislation is **Directive 2009/65/EC** of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS IV or UCITS**). This Directive lays down uniform rules on investment funds, allowing for the cross-border offer of investment funds regulated at EU level. Its main aims are to offer investors a wider choice of products at a lower cost through better investor information, more efficient fund supervision, a more efficient UCITS market in the EU, and to keep the EU's investment sector competitive by adjusting the rules to market developments. In particular, this Directive lays down rules on investor information via a standardised summary information document to make it easier for the consumer to understand the product, a genuine European passport for UCITS management companies, marketing of UCITS in other countries, mergers of UCITS in other countries, and stronger supervision of UCITS and the companies that manage them. The UCITS interplays with the Directive in the context of pre-contractual information (Articles 3, 4 and 5 of DMSFD) for collective investments in transferable securities.

Another development in the investment field is **Directive 2011/61/EU** of the European Parliament and of the Council of 8 June 2011 on **Alternative Investment Fund Managers (AIFMD)** and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010. This Directive establishes a legal framework for the authorisation, supervision and oversight of managers of a range of alternative investment funds (AIFM), including hedge funds and private equity. The Directive does not apply to

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<sup>419</sup> Individual, group or financial institution that makes funds or other assets available to another with the expectation that they will be returned, in addition to any interest and/or fees.

<sup>420</sup> The total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit.

holding companies, management of pension funds, employee participation or savings schemes, supranational institutions, national central banks and insurance contracts. Some key points provided by the Directive are the fact that fund managers are required to obtain authorisation from the competent authority of their home EU country in order to operate in the EU, and must hold a minimum level of capital in the form of liquid or short-term assets. AIFMs are required to ensure that the funds they manage appoint an independent depositary, such as a bank or investment firm responsible for overseeing the fund's activities and ensuring that its assets are appropriately protected. The Directive also covers elements relating to risk management and prudential oversight, treatment of investors, leveraged funds, private equity funds and opt-outs for smaller funds. The deadline for transposition was 22 July 2013. This Directive interplays with the Directive in the area of pre-contractual information (Articles 3, 4 and 5 of DMSFD).

Also relevant is **Regulation (EU) No 1286/2014** of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (**PRIIPs**). This Regulation obliges those who produce or sell investment products to provide retail investors with 'key information documents' (KIDs) about the products. The aim is to help investors to understand and compare the key characteristics and risks of these products. This Regulation applies since 1 January 2018. The PRIIPs interplays with the Directive on pre-contractual information (Articles 3, 4 and 5 of the Directive) in the context of packaged retail and insurance-based investment products.

Another relevant piece of legislation is **Regulation (EU) 2017/1129 (Prospectus Regulation)** of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. This Regulation aims to help companies, especially SMEs, to access different forms of finance in the EU. It simplifies and streamlines the rules and procedures that must be applied when drawing up, securing approval and distributing the prospectus published when offering securities to the public. It repealed Directive 2003/71/EC with effect from 20 July 2019. This Regulation interplays with the Directive on pre-contractual information (Articles 3, 4 and 5 of DMSFD) and on the right of withdrawal (Articles 6 and 7).

Lastly, another piece of legislation of importance in the field of investments is **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 (the **Market in Financial Instruments Directive or MiFID**). This Directive aims to make financial markets in the EU more robust and transparent, creating a new legal framework that regulates trading activities on financial markets and enhances investor protection. The Directive closes loopholes in the structure of financial markets, establishing the Organised Trading Facility (OTF), a new regulated trading platform<sup>421</sup> established to capture a maximum of unregulated trades. The measures of this Directive also seek to limit speculation on commodities, adapt rules to new technologies and reinforce investor protection. It revised the legislation currently in place and entered into force in January 2018. This Directive interplays with the Directive on pre-contractual information (Articles 3, 4 and 5 of the Directive) in the context of investment products.

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<sup>421</sup> 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.

In the area of payment accounts, there is **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 (the **Payment Accounts Directive (PAD)**). This Directive amends aims to tackle three main issues: access to basic payment accounts, transparency and comparability of payment account fees, and bank account switching. It provides access to a bank account to anyone residing legally in the EU, as long as they comply with anti-money laundering rules. It also provides several tools to make fees clearer for consumers. It has applied since 17 September 2014 and its transposition deadline was 18 September 2016. Another development is **Directive 2014/49/EU** of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes. This Directive seeks to protect depositors of all credit institutions, partly to safeguard the stability of the EU. The deadline for transposition was 3 July 2015. The Directives interplays with the Directive regarding the provision of pre-contractual information (Articles 3, 4 and 5 of DMSFD) for payment accounts.

Another relevant piece of legislation is **Directive (EU) 2015/2366 (PSD II)** of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing **Directive 2007/64/EC (the Payment Services Directive or PSD I)**<sup>422</sup>. This Directive provides the legal foundation for the development of a better integrated internal market for electronic payments within the EU, seeking to improve existing EU rules in the area. It sets out comprehensive rules for payment services, aiming to make international payments within the EU as easy, efficient and secure as payments within a single country. It seeks to open up payment markets to new entrants, leading to more competition, greater choice and better prices for consumers. It also provides a legal platform for the Single Euro Payments Area (SEPA). The PSD II (as PSD I) interplays with the Directive provisions on pre-contractual information (Articles 3, 4 and 5 of the Directive), right of withdrawal (Articles 6 and 7) and unsolicited services (Article 9) in the context of payment services.

In the field of insurance, **Directive (EU) 2016/97** of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) is relevant (**Insurance Distribution Directive (IDD)**). This Directive aims to improve the way insurance products are sold so that they will bring real benefits to consumers and retail investors in the EU. It provides for measures that will bring greater transparency and better and more comprehensible information<sup>423</sup>. It also provides rules on transparency and business conduct to prevent customers from buying products that do not meet their needs. It applied from 22 February 2016 and the deadline for transposition was 23 February 2018. This Directive interplays with the Directive on pre-contractual information (Articles 3, 4 and 5 of the Directive).

In the area of personal pension products, there is the **Regulation 2019/1238 on a pan-European Personal Pension Product (PEPP)**. The Regulation seeks to complement the

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<sup>422</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, also required that some information had to be provided to electronic money holder before he/she being bound by any contract or offer.

<sup>423</sup> The Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) already covered the required to provider pre-contractual information on life insurance contract.

current divergent rules at EU and national level by adding a pan-European framework for pensions. It seeks to offer a new voluntary framework for saving, by ensuring sufficient consumer protection when it comes to the essential features of the product. The idea is to create a quality label for EU personal pension products and thereby increase trust among consumers. This Regulation interplays with the Directive on the requirement to provide pre-contractual information (Articles 3, 4 and 5 of the Directive) for personal pensions.

For an analysis of the coherence of the Directive with product specific legislation, please see the support study to the evaluation (p. 123).

## Annex 6: Key concepts and definitions<sup>424</sup>

**Annual percentage rate of charge (APR)** – *the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit.*

**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>425</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>426</sup>

**Borrower** – *a person, firm or institution that obtains a loan from a lender in order to finance consumption or investment.*<sup>427</sup>

**Broker** – *a person or a firm when it acts as an agent for a customer and charges the customer a commission for its services.*<sup>428</sup>

**Chatbot** – *a computer program that simulates human conversation through voice commands or text chats or both.*<sup>429</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>430</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>431</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>432</sup>

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<sup>424</sup> Most of the definitions in this section were taken directly from the referenced sources (text is in italic).

<sup>425</sup> IASCF, Key term list; Commission Regulation (EC) No 1126/2008 (international accounting standards)

<sup>426</sup> European Commission, 2015. Better Regulation Toolbox [SWD (2015) 111].

<sup>427</sup> Collins Dictionary of Economics, 4th ed. 2005

<sup>428</sup> <https://www.investopedia.com/terms/b/broker.asp>

<sup>429</sup> <https://www.investopedia.com/terms/c/chatbot.asp>

<sup>430</sup> <https://www.investopedia.com/terms/c/coldcalling.asp>

<sup>431</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>432</sup> Eurostat, "European System of Accounts - ESA 1995", Office for Official Publications of the European Communities, Luxembourg, 1996



**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>433</sup>

**Cybercrime** – criminal acts that are committed online by using electronic communications networks and information systems.<sup>434</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 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>435</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>436</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>437</sup>

**Creditworthiness assessment** – evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.<sup>438</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>439</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>440</sup>

**Cryptocurrencies** – a virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend.<sup>441</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>442</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>443</sup>

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<sup>433</sup> European Commission, 2015. Better Regulation Toolbox [SWD (2015) 111].

<sup>434</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)

<sup>435</sup> Consumer Credit Directive (2008/48/EC).

<sup>436</sup> Farlex Financial Dictionary, 2012.

<sup>437</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>438</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>439</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>440</sup> European Banking Authority, Glossary for financial innovation.

<sup>441</sup> <https://www.investopedia.com/terms/c/cryptocurrency.asp>.

<sup>442</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.



**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>444</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>445</sup>

**Financial literacy** – capability of consumers and small business owners to understand retail financial products with a view to making informed financial decisions.<sup>446</sup>

**Financial service** – any service of a banking, credit, insurance, personal pension, investment or payment nature.<sup>447</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>448</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>449</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>450</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>451</sup>

**Information asymmetries** – situations in which some agent in a trade possesses information that other agents involved in the same trade do not.<sup>452</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.

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<sup>443</sup> <https://www.dictionary.com/browse/e-wallet>.

<sup>444</sup> Distance Marketing of Financial Services Directive.

<sup>445</sup> Distance Marketing of Financial Services Directive.

<sup>446</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>447</sup> Distance Marketing of Financial Services Directive.

<sup>448</sup> European Banking Authority, Glossary for financial innovation.

<sup>449</sup> European Parliamentary Research Service, 2015, Competence in private law - The Treaty framework for a European private law and challenges for coherence.

<sup>450</sup> European Commission (2017), Better Regulation Guidelines, Glossary

<sup>451</sup> <https://financial-dictionary.thefreedictionary.com/Incremental+costs+and+benefits>.

<sup>452</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).

**InsurTechs** – technology savvy companies that use technological innovations to make the current insurance business model more efficient.<sup>453</sup>

**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>454</sup>

**Lender** – *individual, group or financial institution that makes funds or other assets available to another with the expectation that they will be returned, in addition to any interest and/or fees.*<sup>455</sup>

**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>456</sup>

**Mortgage loan** – *consumer real estate credit, usually extended on a long-term basis with the mortgaged property as security.*<sup>457</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>458</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>459</sup>

**Non-credit institution** – *any creditor that is not a credit institution.*<sup>460</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>461</sup>

**Payday loan** – *a small amount and short-term (up to one year) personal loan.*<sup>462</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>463</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*

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<sup>453</sup> <https://www.investopedia.com/terms/i/insurtech.asp>.

<sup>454</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.

<sup>455</sup> Investopedia, 2019, Adam Barone, <http://www.investopedia.com/terms/l/lender.asp>.

<sup>456</sup> Distance Marketing of Financial Services Directive.

<sup>457</sup> American State Bank, Banking Glossary.

<sup>458</sup> Cambridge Business English Dictionary, 2011.

<sup>459</sup> European Central Bank, 2016, Bank lending survey for the euro area, Glossary.

<sup>460</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>461</sup> <https://www.investopedia.com/terms/p/peer-to-peer-lending.asp>.

<sup>462</sup> European Credit Research Institute (ECRI), 2019, Price rules in consumer credit: should the EU act?

<sup>463</sup> Payment Accounts Directive.

*and/or acquiring of payment transactions; money remittance; payment initiation services; and account information services.*<sup>464</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>465</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>466</sup>

**Product bundling or Bundling practice** – *the offering or the selling of a credit agreement in a package with other 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>467</sup>

**Right of withdrawal** – *consumer's right to terminate a contract without reason within a specified time period, provided certain conditions are fulfilled.*<sup>468</sup>

**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>469</sup> Savings accounts provide instant (“sight deposits”) or time-limited (“time deposits”) access to funds.<sup>470</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>471</sup>

**Stakeholder** – *any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention.*<sup>472</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>473</sup>

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<sup>464</sup> Payment Services Directive.

<sup>465</sup> Dictionary of Banking, UBS 1998 – 2019.

<sup>466</sup> Pan-European Personal Pension Product Regulation.

<sup>467</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>468</sup> IATE EU terminology database, COM-Terminology Coordination, based on: European Commission > Rights & principles applicable when you buy goods or services online.

<sup>469</sup> Investopedia. Savings account. Available at: <https://www.investopedia.com/terms/s/savingsaccount.asp>.

<sup>470</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>471</sup> Credit Plus, 2019, Glossary, available at <https://www.creditplus.co.uk/car-finance-glossary/secci/>.

<sup>472</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>473</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

**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>474</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>475</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 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>476</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>477</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>474</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>475</sup> <https://www.investopedia.com/terms/t/trading-platform.asp>.

<sup>476</sup> European Commission (2017), Better Regulation Guidelines, Glossary.

<sup>477</sup> ECB (2012): “Virtual Currency Schemes”. European Central Bank, Frankfurt am Main. Available at <https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf>.

## Annex 7: Quantification methodology and limitations

This Annex provides a description of the approach used to quantify the market evolution, attribution of impacts to the Directive and the main benefits and costs to consumers, financial providers and public authorities that can be attributed to the Directive since its introduction in 2004. The methodology follows the guidelines provided by:

- The Europe Economics study for DG SANCO on the most appropriate methodologies to estimate consumer detriment<sup>478</sup>;
- The operational guidance document on measuring personal consumer detriment developed as part of the Study on measuring consumer detriment in the EU<sup>479</sup>;
- The Commission's 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>480</sup>.

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<sup>478</sup> Europe Economics (2007). An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it. DG SANCO. Available at: [http://ec.europa.eu/consumers/strategy/docs/study\\_consumer\\_detrimment.pdf](http://ec.europa.eu/consumers/strategy/docs/study_consumer_detrimment.pdf)

<sup>479</sup> CIVIC (2017). Study on Measuring Consumer Detriment in the European Union. Available at: [https://ec.europa.eu/info/sites/info/files/consumer-detriment-study-final-report\\_en.pdf](https://ec.europa.eu/info/sites/info/files/consumer-detriment-study-final-report_en.pdf)

<sup>480</sup> European Commission (2015). Better Regulation Guidelines.

## 1. MARKET EVOLUTION

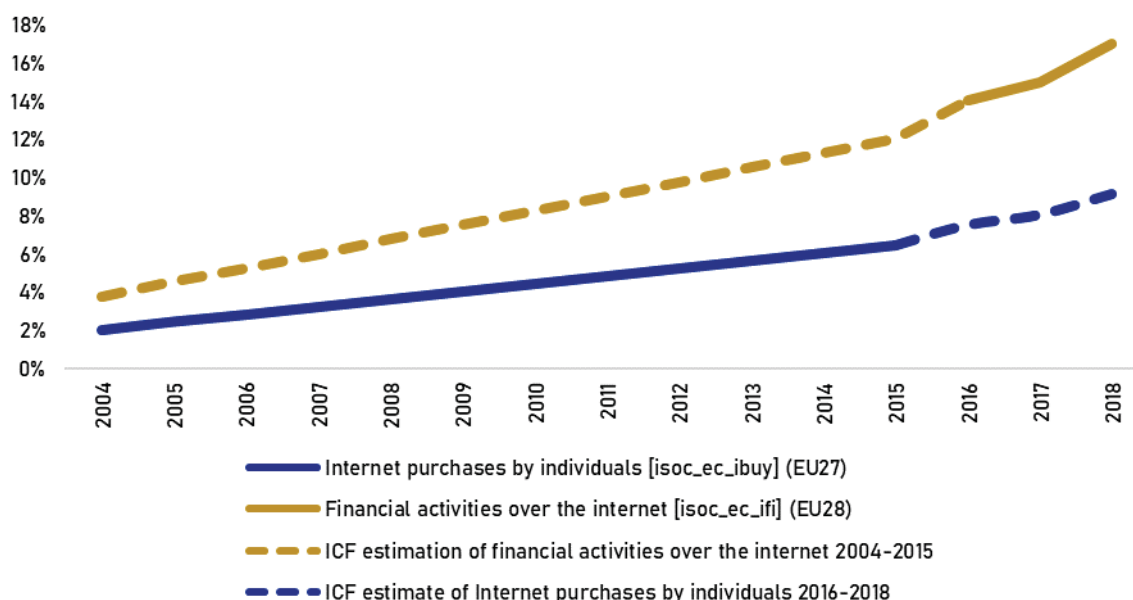
The evaluation did not find data on the market evolution of the financial services sold through all distance means of communication between 2004 and 2018. Consequently, an estimate had to be made based on data available.

Eurostat provides data on the percentage of the population aged between 16 and 74 that has purchased at least one financial service over the internet in two different datasets, one for the period 2004-2015 (isoc\_ec\_ibuy) and one for the period 2016-2018 (isoc\_ec\_ifi). However, the Eurostat data available for the period 2004-2015 do not seem directly comparable with the data for the period 2016-2018 (since the value for 2015 is 6% and the value for 2016 is more than twice that, at 14%)<sup>481</sup>.

In Figure 1, the Eurostat data for 2004-2015 and 2016-2018 is presented. Additionally, the figure shows the ICF estimates for the dataset after/before the 2015/2016 discontinuity. The estimates were done by: (1) extrapolating the data of the 2004-2015 dataset to 2016 using linear regression and then applying the yearly variation of the dataset 2016-2018 to extrapolate the estimated 2016 data point for that period; (2) extrapolating the data of the 2016-2018 dataset to the period 2004-2015 by applying the yearly variation of the dataset 2004-2016 obtained in the previous step to the 2016 data point.

These estimates provide an upper and lower bound to the percentage of individuals that have purchased a financial service online in the 12 months prior to the survey.

*Figure 1. Financial services purchases or activities over the internet between 2004 and 2018 (% of the EU population aged between 16 and 74)*



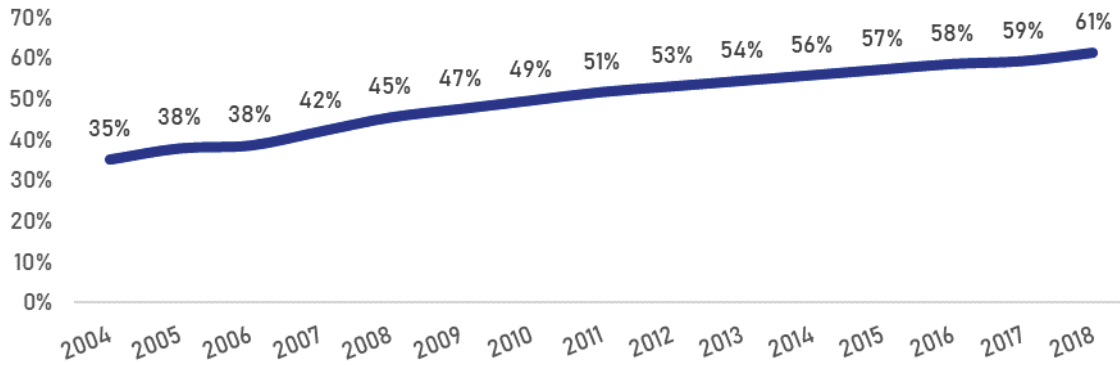
<sup>481</sup> While the question asked in the 2004-2018 surveys was identical, the prompts provided to the respondents were more detailed in the 2016-2018 surveys. Possibly consumers were able to more easily realise that they had a financial service when provided with more details about what financial services can consist of.



Source: Eurostat [isoc\_ec\_ifi] and [isoc\_ec\_ibuy] & ICF (2019) elaboration of existing data and assumptions.

Based on the consumer survey, the share of purchases over the internet in the total distance purchases is 61% for 2019. We extrapolated this data point for the period 2004-2018, assuming that this share evolved in the period 2004-2018 with the use of internet. See Figure 2.

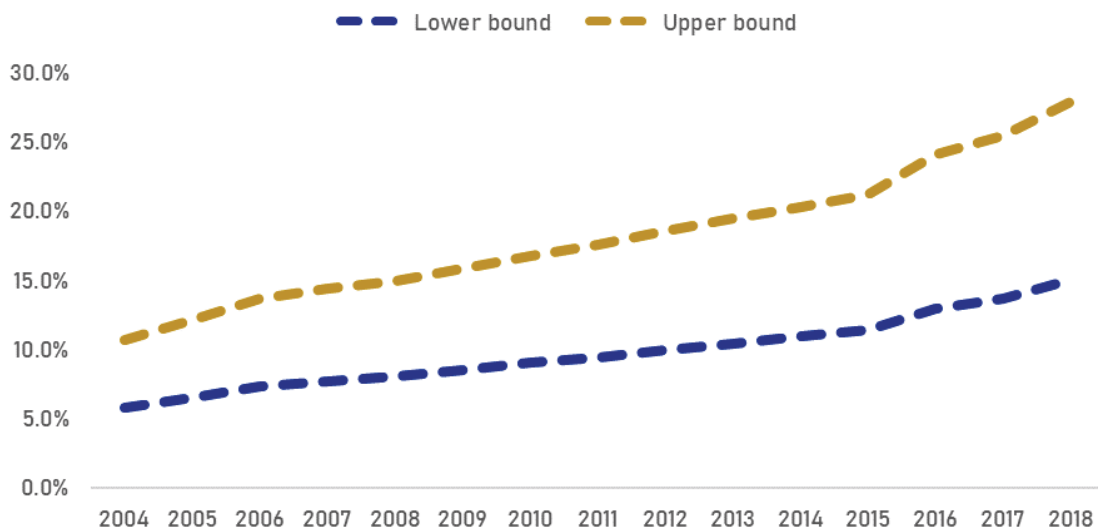
Figure 2. Evolution of the share of purchases of financial services over the internet in the total of distance sales



Source: ICF (2019) elaboration of existing data and assumptions.

Finally, we estimated the percentage of population that has purchased at least one financial product at distance by dividing the percentage of population that has purchased at least one product at distance by the share of online purchases in the total distance purchases. See Figure 3.

Figure 3. ICF estimation of distance sales of financial services between 2004 and 2018 (% EU population aged between 16 and 74)



Source: ICF (2019) elaboration of existing data and assumptions.

## 2. ATTRIBUTION OF IMPACTS TO DMFSD

Not all costs and benefits related to the provision of pre-contractual information and right of withdrawal and to the ban on unsolicited communications and services in the period 2004-2018 can be attributable to the DMFSD. In this section we explain how the attribution rates for each key provision were estimated:

- Step 1. Estimate the maximum change in providers' practices that could be attributed to each provision of the DMFSD per product at the baseline (i.e., baseline attribution rates);
- Step 2. Estimate the displacement of those attribution rates to other legislation in the period 2004-2018;
- Step 3. Estimate the attribution of costs of providers considering the compliance level per provision;
- Step 4. Estimate the attribution of benefits to consumers considering the share of problems that each provision could reasonably address.

### Step 1. Baseline attribution rates

The overall attribution of impacts to DMFSD at the baseline depends on the number of countries that already regulated some/all aspects of the DMFSD and how much of the practices of financial providers were already in line with the requirements of the DMFSD:

- Pre-contractual information: more than one third of the countries had partially regulated this aspect. Therefore, based on a conservative estimate, the DMFSD brought benefits mostly to the remaining 14. Furthermore, it is expected that in those 14 countries, a share of financial providers was already providing some of that information to consumers (e.g., information about the characteristics of the products). Consequently, the attribution of the DMFSD provision on pre-contractual information at the baseline was estimated to be around 50%.
- Right of withdrawal: about 7 Member States out of 25 already had regulations covering this aspect. Therefore, based on a conservative estimate, the DMFSD brought benefits mostly to the remaining 18. It is not expected that providers in those 18 countries were providing the right of withdrawal to consumers spontaneously. Consequently, the attribution of the DMFSD provision on right of withdrawal at the baseline was estimated to be around 72%.
- Unsolicited communications and services: about 9 Member States out of 25 already had regulations covering these aspects. Therefore, based on a conservative estimate, the DMFSD brought benefits mostly to the remaining 14. However, the EDP implemented in 2003 already covered the ban on unsolicited communications. Consequently, the attribution of the DMFSD provisions on unsolicited communications and services at the baseline was estimated to be around 8%.

In order to estimate the baseline attribution per product type the following was considered:

- Existing legislation on investments the impact of the DMFSD on this type of products was minimal;
- Some mortgages and insurances are not covered by Article 6 of the DMFSD and therefore the baseline attribution rate of this provision for these types of products was reduced to around 40%; A small share of banking products might not be covered by this right either and therefore the baseline attribution rate of this

provision for these types of products was reduced to 95% of the overall rate to around 68%.

Product/Service type	Pre-contractual information	Right of withdrawal	Unsolicited communications and services
Banking products	50%	68%	8%
Mortgage	50%	39%	8%
Credit / loans	50%	72%	8%
Insurance	50%	43%	8%
Pensions	50%	72%	8%
Payment services	50%	72%	8%
Investments	5%	5%	8%

### Step 2. Displacement of attribution to other legislation in 2004-2018

With the introduction of EU horizontal and product-specific legislation in the period of analysis, the attribution of impacts on providers' practices to DMFSD was displaced by those pieces of legislation:

- In 2007, half of the impacts of the DMFSD on all products stemming from the unsolicited services were displaced by and transferred to the UCPD;
- In late 2009/2010, about 60% of the impacts of the DMFSD on payment accounts and payment services stemming from the pre-contractual information were displaced by and transferred to the PSD I. And about 60% of the impacts of the DMFSD on payment services stemming from the right of withdrawal were displaced by and transferred to the PSD I;
- In 2010, impacts of the DMFSD on consumer credits stemming from the pre-contractual information and right of withdrawal provisions were mostly displaced by and transferred to the CDD. Based on the data from the consumer survey it was estimated that a share corresponding to credits below EUR 200 and above EUR 75,000 was still attributable to the DMFSD;
- In 2016, all impacts of the DMFSD on mortgages from the pre-contractual information were displaced by and transferred to the MCD, while the half of the impacts stemming from the right of withdrawal were displaced by and transferred to the MCD;
- In 2016, about half of the impacts of the DMFSD on insurances from the pre-contractual information were displaced by and transferred to the Solvency II;
- In 2018, all impacts of the DMFSD on payment services stemming from the pre-contractual information, the right of withdrawal and unsolicited services provisions were displaced by and transferred to the PSD II.
- In 2018, most impacts of the DMFSD on insurances from the pre-contractual information were displaced by and transferred to the PRIPPs and IDD.

### Step 3. Calculation of the attribution of changes in providers practices to DMFSD

The attribution of changes in providers' practices to the DMFSD was estimated considering what part of the baseline attribution could still be attributed to each provision of the DMFSD, considering the displacements described in the point above and the

following compliance levels per provider (the rationale is that those companies that do not comply with the DMFSD do not have compliance costs):

- Pre-contractual information: 60%
- Right of withdrawal: 70%
- Unsolicited Communications and Services: 70%
- Other aspects of DMFSD: 70%.

In the following tables present the share of changes in providers' practices that can be attributable to the DMFSD are presented per provision and type of product.

*Table 1. Attribution of changes in providers' practices to the DMFSD provision on pre-contractual information*

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	30%	30%	30%	30%	30%	30%	12%	12%	12%	12%	12%	12%	12%	12%	12%
Mortgage	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	0%	0%	0%
Credit / loans	30%	30%	30%	30%	30%	30%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Insurance	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	17%	17%	8%
Pensions	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
Payment services	30%	30%	30%	30%	30%	30%	12%	12%	12%	12%	12%	12%	12%	12%	0%
Investments	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%

*Table 2. Attribution of changes in providers' practices to the DMFSD provision on rights of withdrawal*

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%	48%
Mortgage	27%	27%	27%	27%	27%	27%	27%	27%	27%	27%	27%	27%	14%	14%	14%
Credit / loans	50%	50%	50%	50%	50%	50%	13%	13%	13%	13%	13%	13%	13%	13%	13%
Insurance	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
Pensions	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Payment services	50%	50%	50%	50%	50%	50%	20%	20%	20%	20%	20%	20%	20%	20%	0%
Investments	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%

*Table 3. Attribution of changes in providers' practices to the DMFSD provision on unsolicited communications and services*

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	6%	6%	6%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%
Mortgage	6%	6%	6%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%
Credit / loans	6%	6%	6%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%
Insurance	6%	6%	6%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%
Pensions	6%	6%	6%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%





#### Step 4. Attribution of benefits to the DMFSD

Based on the analysis of the evaluation of consumer needs and data from the CIVIC(2017) study, it was estimated that the rate of problems that each provision can address is:

- Pre-contractual information: between 15% and 30%
- Right of withdrawal: between 6% and 10%
- Unsolicited communications and services: between 2% and 4%.

Consequently, the share of benefits (due to reduction of consumer personal detriment) that can reasonably be attributed to the DMFSD are equal to the share of changes in providers' practices (see Step 3) multiplied by the estimated rates of problems that can be addressed by each provision.

Table 4. Attribution of impacts on consumer benefits to the DMFSD provision on pre-contractual information

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Mortgage	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Credit / loans	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Insurance	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Pensions	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Payment services	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Investments	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%

Table 5. Attribution of impacts on consumer benefits to the DMFSD provision on rights of withdrawal

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%
Mortgage	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
Credit / loans	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
Insurance	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Pensions	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
Payment services	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
Investments	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%

Table 6. Attribution of impacts on consumer benefits to the DMFSD provision on unsolicited communications and services

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Mortgage	0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Credit / loans	0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Insurance	0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Pensions	0%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%



### 3. BENEFITS

According to its two main objectives, the DMFSD should have the following benefits:

- Consumers are better protected, which in turn leads to lower consumer detriment (possible lower incidence/magnitude of problems) and an increase in demand.
- Level playing field, potentially leading to an increase in cross-border and domestic supply.

The evaluation found evidence that the DMFSD had increased consumer protection. It did not, however, find evidence that changes in the demand or supply of financial services through distance means of communication can be directly attributed to the DMFSD. The impact of the DMFSD was only quantified in respect of the reduction in consumer:

- personal detriment between 2004 and 2018;
- structural detriment between 2004 and 2018.

#### Reduction of personal detriment

Personal detriment refers to the loss of welfare experienced by individuals due to problems that occur after their 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 steps taken to calculate the incremental effect of the DMFSD on personal detriment are outlined below.

**Step 1.** Estimation of the attribution of the impact of the DMFSD on the reduction of consumer detriment by main consumer protection objective and type of financial service/product (see section on attribution – step 4)

**Step 2.** Estimation of the magnitude of consumer personal financial detriment per problem and per service with the DMFSD

The estimation of the current magnitude of consumers' personal detriment per problem was based on the data reported in the following studies (see Table 7):

- Study on Measuring Consumer Detriment in the European Union<sup>482</sup>;
- Consumer Detriment Survey 2014<sup>483</sup>.

Table 7. *Magnitude of financial detriment for financial services from reference studies*

Type of financial service	Channel	Year	Magnitude (post-redress) EUR	Scope
Loans, credit and credit cards	All	2015	154.9	EU

<sup>482</sup> CIVIC (2017). Study on Measuring Consumer Detriment in the European Union. Available at: [https://ec.europa.eu/info/sites/info/files/consumer-detriment-study-final-report\\_en.pdf](https://ec.europa.eu/info/sites/info/files/consumer-detriment-study-final-report_en.pdf)

<sup>483</sup> Ipsos MRBI (2014). Consumer Detriment Survey 2014. Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/Consumer-Detriment-Survey-2014-Report.pdf>

Loans, credit and credit cards	Online	2015	166.3	EU
Financial Services	Goods and All	2014	206*	Ireland
Financial Services	Goods and Online	2014	171*	Ireland

\*estimated based on the share of compensation in the gross costs reported in CIVIC (2017)

\*\*estimated based on ratio online/all from CIVIC (2017)

The data on the magnitude of consumer detriment was only available for two years and for some types of financial services. It was extrapolated to the missing financial services and years using the Consumer Markets Scoreboard data on ‘Percentage of people who complained after having experienced at least one problem’, as the rate of complaints were considered likely to increase proportionally with the magnitude of the problem/consumer detriment<sup>484</sup>.

Table 8. Magnitude of personal consumer financial detriment in the scenario with the DMFSD (EUR, 2018 prices)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	197	195	192	190	188	186	184	181	184	166	163	173	183	172	162	164
Mortgage	202	201	200	199	198	197	196	195	196	180	170	170	173	180	187	189
Credit / loans	184	182	181	179	177	176	174	173	173	160	154	164	173	167	158	160
Insurance	199	198	196	195	193	192	190	189	184	175	168	173	177	175	175	177
Pensions	188	187	185	184	182	181	180	178	177	175	174	173	171	170	169	171
Payment services	191	189	187	186	184	182	181	179	177	176	174	173	171	170	168	170
Investments	198	197	195	194	193	192	190	189	187	177	175	173	170	175	177	180

### Step 3. Estimation of the time loss per problem and per service in the scenario with the DMFSD

The estimation of the time loss per problem in 2015 was based on the data reported in CIVIC (2017), which is also in line with the results of the consumer survey. These data were then extrapolated to the remaining financial services and years for the period 2003-2018, following the same approach as described above for the magnitude of consumer detriment. The personal consumer detriment due to time loss was then monetised using the population-weighted mean of the hourly earnings rate for the EU (as suggested by CIVIC (2017) at 2018 prices (i.e. EUR 13.65).

Table 9. Monetised time losses per problem and per financial service in the scenario with the DMFSD (EUR, 2018 prices)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
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<sup>484</sup> This is a limitation of the analysis, as there are other factors that can influence consumers’ decisions to complain or not (e.g. change in consumer behaviour, level of trust in the institution, etc.).

Banking products	0.9	0.9	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.4	0.4	0.4	0.3	0.3	0.2	0.2
Mortgage	0.5	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.3	0.2	0.2	0.3	0.2	0.2	0.2
Credit / loans	0.6	0.6	0.6	0.5	0.5	0.5	0.5	0.4	0.4	0.3	0.3	0.3	0.2	0.2	0.2	0.2
Insurance	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1
Pensions	0.4	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.1
Payment services	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.2	0.2	0.2	0.2
Investments	1.1	1.0	1.0	0.9	0.8	0.8	0.7	0.6	0.4	0.3	0.3	0.3	0.2	0.2	0.2	0.1

**Step 4.** Estimation of the rate of problems per financial service in the scenario with the DMFSD.

The problem rate was based on the Consumer Markets Scoreboard data on ‘Percentage of people who experienced at least one problem’ for the period 2010-2017 per type of financial service. The extrapolation to the period 2003-2009 and 2018 was based on a linear regression analysis.

*Table 10. Rate of problems per financial service in the scenario with the DMFSD*

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	27%	26%	24%	23%	22%	21%	19%	18%	17%	14%	14%	12%	10%	10%	9%	8%
Mortgage	18%	17%	17%	16%	15%	14%	14%	13%	13%	10%	9%	9%	10%	9%	8%	7%
Credit / loans	20%	19%	18%	17%	17%	16%	15%	14%	14%	12%	12%	10%	8%	8%	8%	7%
Insurance	11%	11%	10%	10%	9%	9%	8%	8%	8%	7%	6%	6%	6%	5%	5%	5%
Pensions	14%	13%	13%	12%	12%	11%	11%	11%	10%	10%	9%	9%	8%	8%	8%	5%
Payment services	19%	18%	17%	17%	16%	15%	14%	13%	12%	11%	11%	10%	9%	8%	8%	7%
Investments	36%	34%	32%	30%	27%	25%	23%	21%	14%	11%	10%	10%	9%	8%	6%	4%

**Step 5.** Estimation of the number of services per type of financial service/products

This was estimated based on the lower bound (low demand scenario) and the upper bound (high demand scenario) of the percentage of the EU population that purchased at least on financial services at distance (see section on market evolution) adjusted to the average number of products a person purchases per year assuming that on average a person owns around 1.4 insurances, 1.6 credits/loans and 1.5 investments, while it only owns 1 product of the other types of services<sup>485</sup>. The next tables present the share of financial services sold using distance means of communication owned by the EU population per type of service in the period 2004-2018, assuming a low demand and a higher demand respectively.

*Table 11. Financial services sold using distance means of communication owned by the EU population per type of service in the period 2003-2018 (% of total population) – low demand*

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	2%	3%	3%	3%	3%	4%	4%	4%	4%	4%	5%	5%	5%	6%	6%

<sup>485</sup> Consumer survey



Mortgage	0%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Credit / loans	2%	2%	3%	3%	3%	3%	3%	4%	4%	4%	4%	4%	5%	7%	9%
Insurance	13%	15%	17%	18%	19%	20%	21%	22%	23%	24%	25%	27%	30%	33%	34%
Pensions	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%	2%
Payment services	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Investments	5%	5%	6%	6%	6%	7%	7%	8%	8%	8%	9%	9%	10%	10%	12%

Table 12. Financial services sold using distance means of communication owned by the EU population per type of service in the period 2003-2018 (% of total population) – **high demand**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Banking products	4%	5%	6%	6%	6%	7%	7%	7%	8%	8%	9%	9%	10%	11%	12%
Mortgage	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%	2%
Credit / loans	4%	5%	5%	5%	6%	6%	6%	7%	7%	7%	8%	8%	9%	13%	17%
Insurance	25%	28%	32%	34%	35%	37%	39%	41%	43%	45%	48%	49%	56%	61%	64%
Pensions	1%	1%	1%	2%	2%	2%	2%	2%	2%	2%	2%	2%	3%	3%	3%
Payment services	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%	2%	2%	2%	3%	3%
Investments	9%	10%	11%	11%	12%	13%	13%	14%	15%	15%	16%	17%	19%	19%	23%

The number of services was assumed to be roughly the same in the scenario with the DMFSD (which corresponds to reality) and the hypothetical scenario of the situation without the DMFSD.

**Step 6.** Calculation of the personal consumer detriment (financial and time losses) per service owned, in the scenario with the DMFSD and without the DMFSD.

The personal consumer detriment (financial and time losses) per service owned in the scenario with the DMFSD was calculated by multiplying the magnitude of personal consumer financial service and the time losses by the rate of problems per service owned.

The values for the scenario without the DMFSD were obtained by:

- Calculating the incremental reduction in personal consumer detriment (financial and time losses) between the baseline (2004, 2005, 2006 and 2007)<sup>486</sup> and 2008;
- For each year of the period 2008-2018, add to the personal consumer detriment calculated for the scenario with the DFMSD, the share of the incremental reduction that can be attributed to the DMFSD (using the attribution rates estimated in step 1).

**Step 7.** Calculate the total personal consumer detriment (financial and time losses) in the scenario with and without the DMFSD.

The total personal consumer detriment (financial and time losses) in the scenario with the DMFSD and without the DMFSD was obtained by multiplying the personal consumer detriment per service owned by the EU population.

<sup>486</sup> The transposition of the Directive took place between late 2004 and 2007.

**Step 8.** Calculate the net benefits of the DMFSD in terms of personal consumer detriment (financial and time losses).

The net benefits of the DMFSD in respect of personal consumer financial detriment are the difference between the personal consumer financial detriment in the scenario with the DMFSD and the personal consumer financial detriment in the scenario without the DMFSD.

The net benefits of the DMFSD regarding time losses are the difference between the time losses in the scenario with the DMFSD and the time losses in the scenario without the DMFSD.

Finally, the total net benefits in terms of personal consumer detriment are the sum of the net benefits of the DMFSD for personal consumer financial detriment and the net benefits of the DMFSD for time losses.

The following tables present the:

- Reduction of consumer financial detriment with low and high demand per type of product and provision;
- Reduction of monetised time losses with low and high demand per type of product and provision;
- Reduction of the overall consumer personal detriment (financial detriment plus time losses) with low and high demand per type of product and provision;
- Consumer personal detriment in the situation with DMFSD and situation without DMFSD with low and high demand.

Table 13. Benefits of the DMFSD for personal consumer financial detriment (NPV@4%, EUR million, 2018 prices) – **low demand**<sup>487</sup>

	Pre-contractual	Right withdrawal	of services and communications	Total
Banking products	61	65	2	128
Mortgage	7	3	0	9
Credit / loans	18	15	1	34
Insurance	169	76	3	248
Pensions	9	6	0	15
Payment services	9	5	0	14
Investments	31	14	5	50
<b>Total</b>	<b>304</b>	<b>184</b>	<b>11</b>	<b>498</b>

Table 14. Benefits of the DMFSD for personal consumer financial detriment (NPV@4%, EUR million, 2018 prices) – **high demand**<sup>488</sup>

	Pre-contractual	Right withdrawal	of services and communications	Total
Banking products	114	121	3	238
Mortgage	12	5	0	18
Credit / loans	33	28	1	63
Insurance	316	141	6	462
Pensions	17	11	0	28
Payment services	16	10	0	27
Investments	58	26	9	93
<b>Total</b>	<b>567</b>	<b>342</b>	<b>20</b>	<b>929</b>

<sup>487</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

<sup>488</sup> Ibid.

Table 15. Benefits of the DMFSD regarding *time losses* (NPV@4%, EUR million, 2018 prices) – *low demand*<sup>489</sup>

	Pre-contractual	Right withdrawal	of Unsolicited services and communications	Total
Banking products	21	22	1	44
Mortgage	3	1	0	4
Credit / loans	8	7	0	15
Insurance	60	27	1	88
Pensions	3	2	0	6
Payment services	3	2	0	5
Investments	11	5	2	18
<b>Total</b>	<b>110</b>	<b>66</b>	<b>4</b>	<b>180</b>

Table 16. Benefits of the DMFSD regarding *time losses* (NPV@4%, EUR million, 2018 prices) – *high demand*<sup>490</sup>

	Pre-contractual	Right withdrawal	of Unsolicited services and communications	Total
Banking products	39	42	1	82
Mortgage	5	2	0	8
Credit / loans	14	12	1	27
Insurance	112	50	2	164
Pensions	6	4	0	10
Payment services	6	4	0	10
Investments	21	9	3	34
<b>Total</b>	<b>204</b>	<b>123</b>	<b>7</b>	<b>335</b>

<sup>489</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

<sup>490</sup> Ibid.

Table 17. Present value of the **benefits of the DMFSD** per type of financial service and key provision (EUR million, 2018 prices) – **low demand**<sup>491</sup>

	Pre-contractual	Right withdrawal	of Unsolicited services and communications	Total
Banking products	82	87	2	172
Mortgage	10	4	0	14
Credit / loans	26	22	1	48
Insurance	229	102	4	336
Pensions	12	8	0	21
Payment services	12	8	0	20
Investments	43	19	7	68
<b>Total</b>	<b>414</b>	<b>250</b>	<b>15</b>	<b>678</b>

Table 18. Present value of the **benefits of the DMFSD** per type of financial service and key provision (EUR million, 2018 prices) – **high demand**<sup>492</sup>

	Pre-contractual	Right withdrawal	of Unsolicited services and communications	Total
Banking products	153	163	4	320
Mortgage	18	7	0	25
Credit / loans	48	40	2	90
Insurance	428	191	8	626
Pensions	23	15	0	38
Payment services	22	14	1	37
Investments	79	35	12	127
<b>Total</b>	<b>771</b>	<b>465</b>	<b>27</b>	<b>1263</b>

<sup>491</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

<sup>492</sup> Ibid.

Table 19. *Personal consumer detriment in the scenario with and without the DMFSD (EUR million, 2018 prices) – low demand<sup>493</sup>*

	Scenario with DMFSD	Scenario DMFSD	without	Difference
1) Pre-contractual information	11,908	12,321		414
2) Right of withdrawal	4,516	4,766		250
3) Unsolicited communications and services	1,783	1,798		15
<b>Total</b>	<b>18,207</b>	<b>18,885</b>		<b>678</b>

Table 20. *Personal consumer detriment in the scenario with and without the DMFSD (EUR million, 2018 prices) – high demand<sup>494</sup>*

	Scenario with DMFSD	Scenario DMFSD	without	Difference
1) Pre-contractual information	22,186	22,957		771
2) Right of withdrawal	8,414	8,879		465
3) Unsolicited communications and services	3,323	3,350		27
<b>Total</b>	<b>33,924</b>	<b>35,187</b>		<b>1,263</b>

<sup>493</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

<sup>494</sup> Ibid.



Figure 4. Evolution of the benefits of DMFSD (i.e., reduction of consumer personal detriment) per key provision – **Low demand scenario**

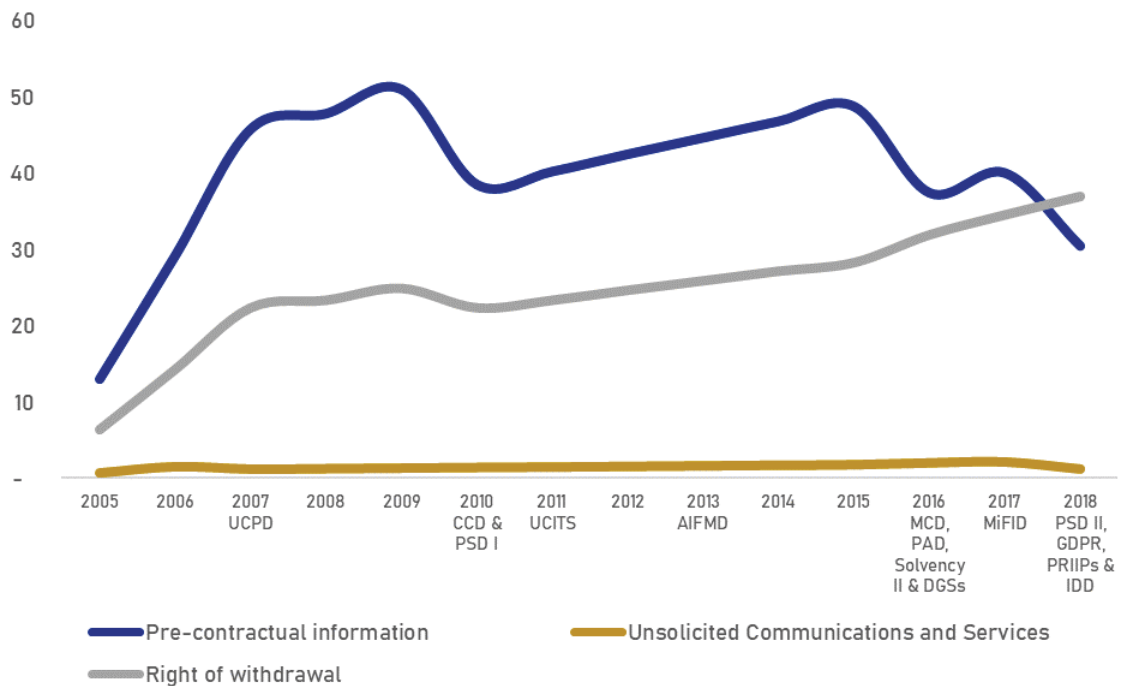


Figure 5. Evolution of the benefits of DMFSD (i.e., reduction of consumer personal detriment) per key provision – **High demand scenario**

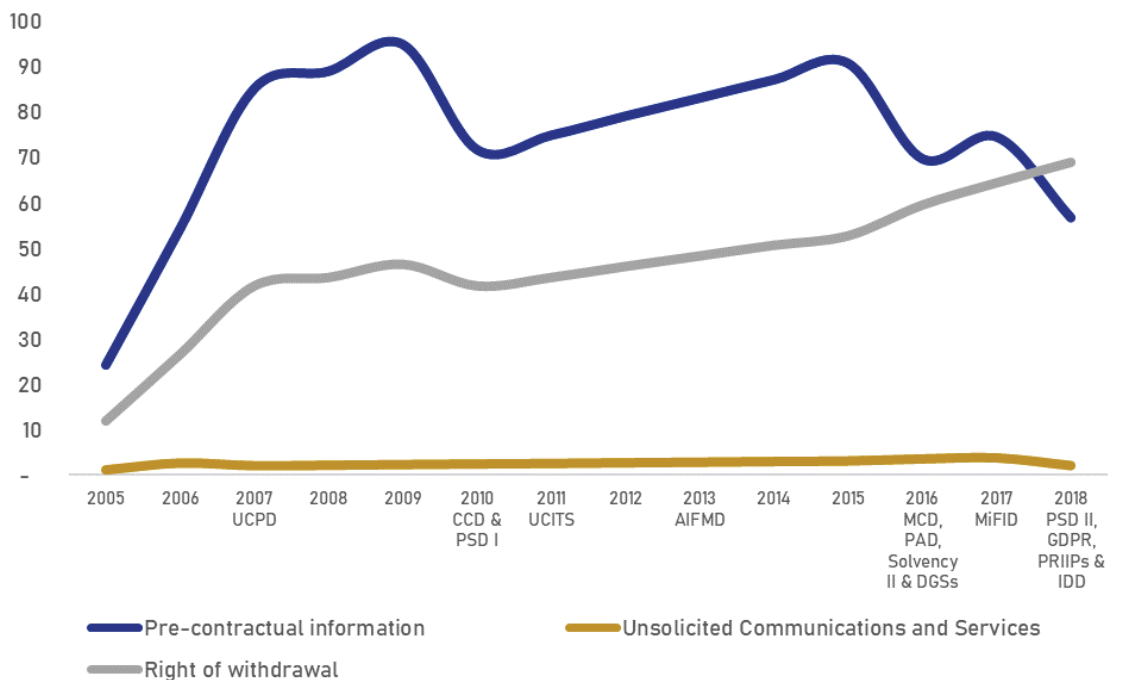


Figure 6. Evolution of the reduction of consumer detriment, 2005-2018 – **Low demand scenario**

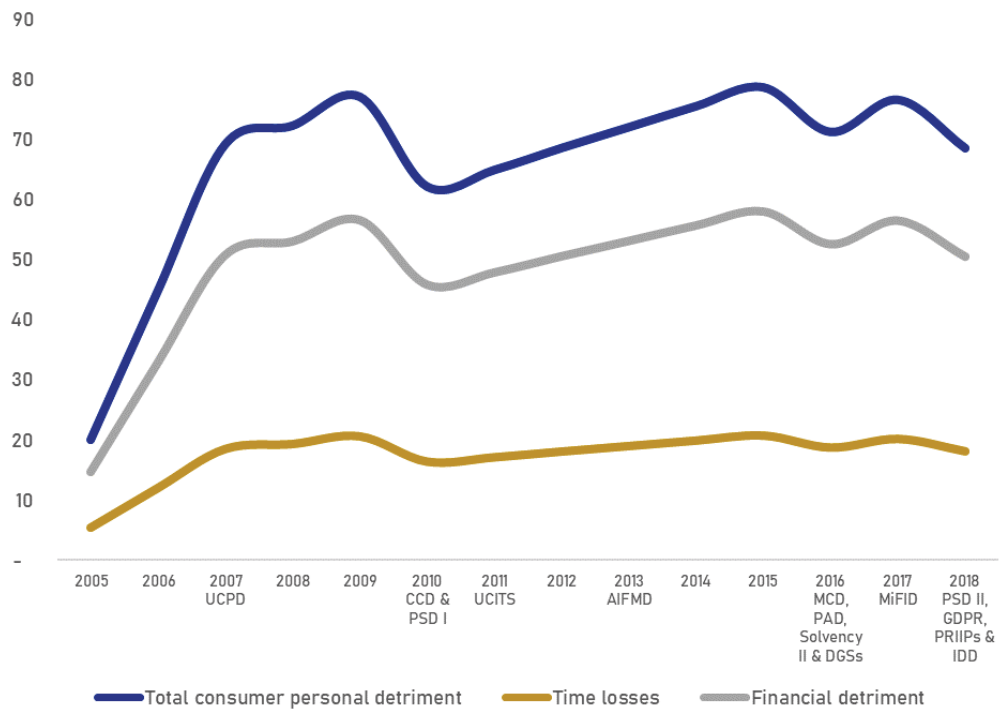
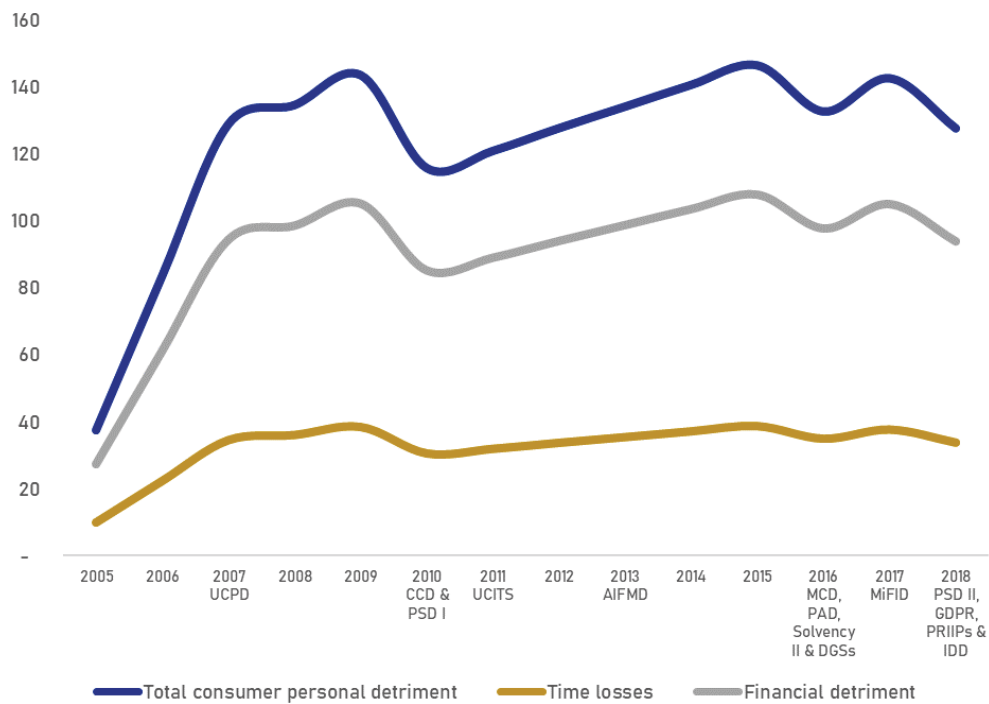


Figure 7. Evolution of the reduction of consumer detriment, 2005-2018 – **High demand scenario**



In the next two figures we present the evolution of the EU population that has benefited from each key DMFSD provision for the low and high demand scenario.

Figure 8. EU population that benefitted from each key DMFSD provision in the period 2004-2018 – **Low demand** scenario

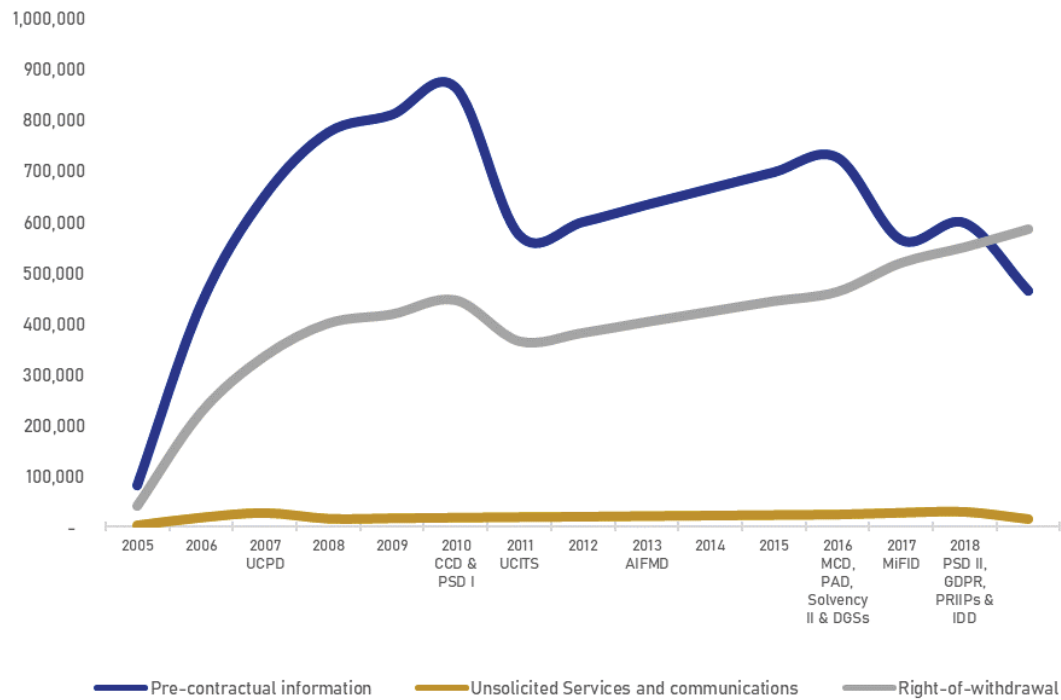
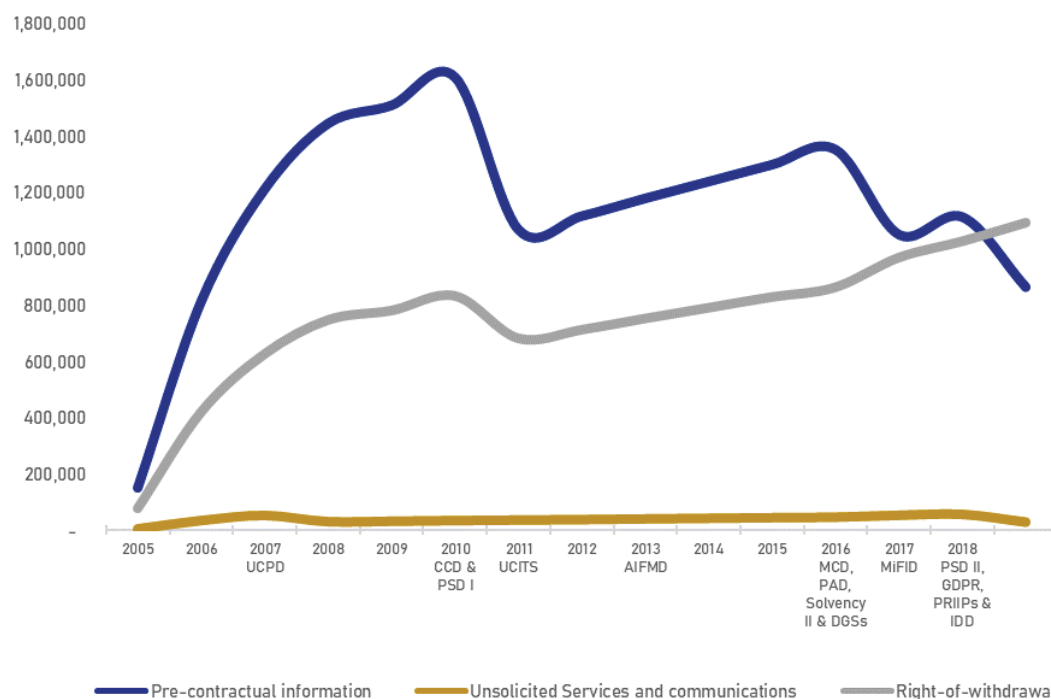


Figure 9. EU population that benefitted from each key DMFSD provision in the period 2004-2018 – **High demand scenario**



### Reduction of consumer structural detriment due to imperfect information

The structural detriment refers to the loss of consumer welfare as a result of a market failure. Following the recommendations of the Europe Economics handbook, the potential impact of the DMFSD in addressing possible failures resulting from imperfect information on quality and price (therefore in reducing structural detriment) was analysed. The impact of the DMFSD could be assessed by analysing its effect on the switching behaviour of consumers.

However, based on the data from the Consumer Market Scoreboard (2010-2017), the switching of providers decreased for most of the products, with the exception of mortgages. As the demand for this product through distance means of communication is very low, it can be concluded that any impact of the DMFSD on consumer structural detriment is negligible.

#### 4. COSTS

The costs of the DMFSD for financial service providers and public administrations relate to compliance, monitoring and enforcement, and can be sub-divided into one-off costs and recurrent costs. The one-off costs relate to costs that providers and public administrations incurred only when the DMFSD was implemented. Recurrent costs are those related to the DMFSD that financial service providers and public administrations incur regularly.

##### Costs for public administrations

The *one-off costs* to public administrations related to the implementation of the DMFSD derived from the need to transpose the Directive into national law and to implement/adapt of complaint handling/redress systems. The methodology and assumptions to calculate the transposition costs are described in Table 21.

Table 21. Approach to calculating one-off costs for public administrations

One-off cost	Methodology	Assumptions
Transposition	Unit cost = No. of people involved in the task x No. of days per involved person x Average daily wage for the public sector  Total cost = Unit cost x 28 Member States	<ul style="list-style-type: none"> <li>3 officials per Member State for 10-20 days per month for 12 months<sup>495</sup></li> <li>Average daily wage for the public sector per country (from Eurostat)</li> </ul>
Implementation/adaptation of complaint handling/redress systems	Total cost = Unit cost x 28 Member States	<ul style="list-style-type: none"> <li>Unit cost public administration EUR 100,000<sup>496</sup></li> </ul>

The *recurrent costs* for public administrations related to the implementation of the DMFSD are those for monitoring the compliance of financial providers with the Directive, enforcing the Directive (e.g. sweeps, investigations) and complaint handling/redress. The methodology and assumptions followed to calculate these costs are summarised in Table 22.

Table 22. Approach to calculating recurrent costs for public administrations

Recurrent cost	Methodology	Assumptions
Monitoring	Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public sector  Total cost = Unit cost x 28 Member States	<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 per country (from Eurostat)</li> </ul>
Enforcement	Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public	<ul style="list-style-type: none"> <li>4 officials per Member State for 2 days per month</li> </ul>

<sup>495</sup> Based on Quantification of the economic impacts of EU action to improve fee transparency, comparability and mobility in the Internal Market for personal payment accounts. (adjusted to the DMFSD context based on data from previous studies and expert judgment)

<sup>496</sup> Stakeholders surveys.

	sector	<ul style="list-style-type: none"> <li>Average daily wage for the public sector per country (from Eurostat)</li> </ul>
	Total cost = Unit cost x 28 Member States	
Complaint handling/redress	Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the public sector	<ul style="list-style-type: none"> <li>2 official per Member State for 4 days per month</li> <li>Average daily wage for the public sector per country (from Eurostat)</li> </ul>
	Total cost = Unit cost x 28 Member States	

## Costs for financial providers

The *one-off costs* to financial providers related to the implementation of the DMFSD were:

- Time spent by legal department to familiarise with new legislative requirements (including time to understand the exemptions, concepts, etc.);
- Cost of updating/adapting internal IT systems to the following key requirements of the Directive:
  - Pre-contractual information requirements;
  - Right of withdrawal requirements;
  - Unsolicited communications and services;
- Internal communications/ initial staff training on the following key requirements of the Directive:
  - Pre-contractual information;
  - Right of withdrawal requirements;
  - Unsolicited communications and services;
  - Other.
- Updating website with required information and functionalities;
- Time spent by legal department to adapt contractual documentation;
- Implementation/adaptation of complaint mechanism.

The methodology and assumptions used to calculate these costs is described in Table 23. It is important to highlight that, like the approach to the quantification of benefits, some one-off costs to financial providers were adjusted in light of what can be attributed to the implementation of the Directive (per key provision) and the level of compliance with the Directive (per key provision).

*Table 23. Approach to calculating one-off costs for financial providers*

One-off cost	Methodology	Assumptions
Familiarisation with the Directive	Unit cost = No. of people involved in the task x No. of days per person x Average daily wage for the financial sector	<ul style="list-style-type: none"> <li>2 staff members per financial institution for 15 to 40 days per staff member<sup>497</sup></li> <li>Average daily wage for the</li> </ul>

<sup>497</sup> Estimations done based on interviews with legal experts.



	Total cost = Unit cost x number of financial institutions	<ul style="list-style-type: none"> <li>financial sector per country (from Eurostat)</li> <li>Number of financial institutions</li> </ul>
Cost of updating/adapting IT systems to pre-contractual information requirements	<p>Unit cost = Average cost of updating/adapting one IT system</p> <p>Total cost = Unit cost x number of financial institutions x share of financial institutions that adapted their systems to this requirement</p>	<ul style="list-style-type: none"> <li>EUR 5,000-65,000 per institution<sup>498</sup></li> <li>Number of financial institutions</li> <li>Values for attribution and compliance</li> </ul>
Cost of updating/adapting IT systems to right of withdrawal requirements	<p>Unit cost = Average cost of updating/adapting one IT system</p> <p>Total cost = Unit cost x number of financial institutions x share of financial institutions that adapted their systems to this requirement</p>	<ul style="list-style-type: none"> <li>EUR 5,000-65,000 per institution</li> <li>Number of financial institutions</li> <li>Values for attribution and compliance</li> </ul>
Cost of updating/adapting IT systems to unsolicited communications and services requirements	<p>Unit cost = Average cost of updating/adapting one IT system</p> <p>Total cost = Unit cost x number of financial institutions x share of financial institutions that adapted their systems to this requirement</p>	<ul style="list-style-type: none"> <li>EUR 5,000-65,000 per institution</li> <li>Number of financial institutions</li> <li>Values for attribution and compliance</li> </ul>
Staff training on pre-contractual information	<p>Unit cost = No. of people involved 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 x share of financial institutions that needed to adapt to this requirement</p>	<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 per country (from Eurostat)</li> <li>Number of financial institutions</li> <li>Values for attribution and compliance</li> </ul>
Staff training on right of withdrawal	<p>Unit cost = No. of people involved 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 x share of financial institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>Communication/ training takes 1 days</li> <li>All front office employees (assumed to be 20% of workforce) undergo training</li> <li>Average daily wage for the financial sector per country (from Eurostat)</li> <li>Number of financial institutions</li> <li>Values for attribution and compliance</li> </ul>
Staff training on unsolicited communications and services	<p>Unit cost = No. of people involved x No. of days per person x Average daily wage for the financial sector</p>	<ul style="list-style-type: none"> <li>Communication/ training takes 0.5 days</li> <li>All employees involved in</li> </ul>

<sup>498</sup> Based on interviews and expert knowledge obtained from past studies. These values were adjusted to the context of the DMFSD (e.g., by allocating costs per provision).

	<p>Total cost = Unit cost x number of financial institutions x share of financial institutions that needed to adapt to this requirement</p>	<p>marketing (assumed to be 5% of workforce) undergo training</p> <ul style="list-style-type: none"> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Number of financial institutions</li> <li>• Values for attribution and compliance</li> </ul>
Staff training on other aspects of the DMFSD	<p>Unit cost = No. of people involved 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 x share of financial institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>• Communication/ training takes 0.25 days</li> <li>• All employees involved in marketing (assumed to be 5% of workforce) undergo training</li> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Number of financial institutions</li> <li>• Values for attribution and compliance</li> </ul>
Updating website	<p>Unit cost = Average cost of updating website</p> <p>Total cost = Unit cost x number of financial institutions x share of financial institutions that adapted their websites</p>	<ul style="list-style-type: none"> <li>• EUR 10,000-30,000 per institution</li> <li>• Number of financial institutions</li> <li>• Values for attribution and compliance</li> </ul>
Updating contractual documentation	<p>Unit cost = No. of people involved 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 x share of financial institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>• 2 members of legal team</li> <li>• 10 to 20 days per team member</li> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Number of financial institutions</li> <li>• Values for attribution and compliance</li> </ul>
Implementation/adaptation of complaint mechanisms	<p>Unit cost = No. of people involved 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 x share of financial institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>• 4 members of legal team</li> <li>• 10 to 20 days per team member</li> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Number of financial institutions</li> <li>• Values for attribution and compliance</li> </ul>

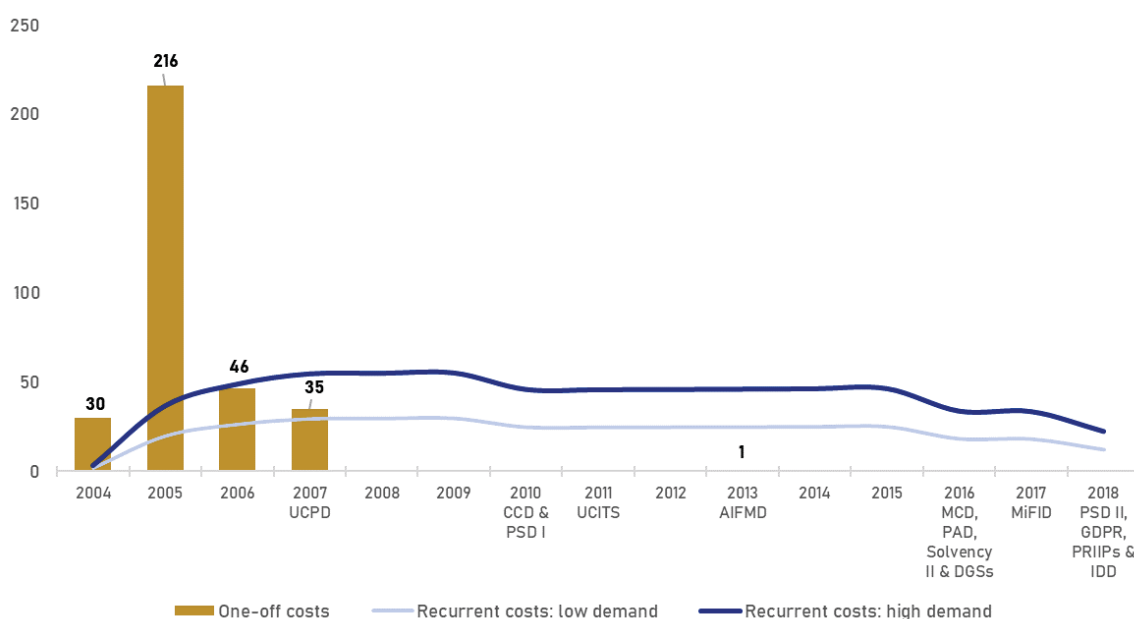
The *recurrent costs* of the financial providers related to the need to comply with the DMFSD depend on their level of compliance with the Directive and their need to adjust their operations to the Directive (which in some cases was not necessary as the financial providers were already operating in line with the key requirements of the Directive). See Table 24 for a description of the approach taken to calculate these costs.

Table 24. Approach to calculating recurrent costs of financial providers

Recurrent cost	Methodology	Assumptions
Compliance with pre-contractual information requirements	<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 No. requests</p>	<ul style="list-style-type: none"> <li>• 1 official per request</li> <li>• 1 minute per request</li> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Only between one-third and one-quarter of requests are followed by contracts</li> <li>• Values for attribution and compliance</li> </ul>
Compliance with right of withdrawal requirements	<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 No. requests for withdrawal</p>	<ul style="list-style-type: none"> <li>• 1 official per request of withdrawal</li> <li>• 10 minutes per request of withdrawal</li> <li>• Average daily wage for the financial sector per country (from Eurostat)</li> <li>• Requests for withdrawals are 10% to 15% of the number of contracts (depending on the service)</li> <li>• Values for attribution and compliance</li> </ul>

The graph below presents the one-off costs and the recurrent costs (for both scenarios – high and low demand) of financial providers.

Figure 10. Overview of the estimated costs of the DMFSD for financial providers (EUR million, prices of 2018)



## **Total costs for public administrations and financial providers**

The tables below present the one-off costs and recurrent costs for public administrations and financial providers that can be attributable to DMFSD, with low demand and high demand.

Figure 11. One off costs and recurrent cost of public authorities and financial providers attributable to the DMFSD – low demand (millions of euros, prices of 2018)<sup>499</sup>

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	NPV
One-off costs	35	222	48	36	0	0	0	0	0	1	0	0	0	0	0	326
Financial providers	31	222	48	36	0	0	0	0	0	1	0	0	0	0	0	321
Public Administrators	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Recurrent costs	2	22	29	33	33	33	27	27	27	27	27	27	20	20	15	283
Financial providers	2	20	27	30	31	31	25	25	25	25	25	25	18	18	13	263
Public Administrators	0	1	2	2	2	2	2	2	2	2	2	2	2	2	2	20
<b>Total</b>	<b>37</b>	<b>244</b>	<b>77</b>	<b>69</b>	<b>33</b>	<b>33</b>	<b>27</b>	<b>27</b>	<b>27</b>	<b>28</b>	<b>27</b>	<b>27</b>	<b>20</b>	<b>20</b>	<b>15</b>	<b>609</b>
<b>Financial providers</b>	<b>32</b>	<b>243</b>	<b>75</b>	<b>67</b>	<b>31</b>	<b>31</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>26</b>	<b>25</b>	<b>25</b>	<b>18</b>	<b>18</b>	<b>13</b>	<b>585</b>
One-off Costs	31	222	48	36	0	0	0	0	0	1	0	0	0	0	0	321
Recurrent Costs	2	20	27	30	31	31	25	25	25	25	25	25	18	18	13	263
Public Administrators	5	1	2	2	2	2	2	2	2	2	2	2	2	2	2	25
One-off Costs	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Recurrent Costs	0	1	2	2	2	2	2	2	2	2	2	2	2	2	2	20
<b>Total</b>	<b>37</b>	<b>244</b>	<b>77</b>	<b>69</b>	<b>33</b>	<b>33</b>	<b>27</b>	<b>27</b>	<b>27</b>	<b>28</b>	<b>27</b>	<b>27</b>	<b>20</b>	<b>20</b>	<b>15</b>	<b>609</b>
<b>Pre-contractual information</b>	<b>13</b>	<b>95</b>	<b>37</b>	<b>35</b>	<b>22</b>	<b>22</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>18</b>	<b>17</b>	<b>17</b>	<b>11</b>	<b>11</b>	<b>6</b>	<b>296</b>
One-off costs	12	80	18	13	0	0	0	0	0	0	0	0	0	0	0	117
Recurrent costs	1	14	19	22	22	22	17	17	17	17	17	17	11	11	6	179
Right of withdrawal	13	92	28	23	10	10	9	9	9	9	9	9	8	8	8	219
One-off costs	13	85	19	13	0	0	0	0	0	0	0	0	0	0	0	124
Recurrent costs	1	7	9	10	10	10	9	9	9	9	9	9	8	8	8	94
Unsolicited communications and services	3	16	4	3	1	0	0	0	0	1	0	0	0	0	0	29
One-off costs	3	16	3	3	0	0	0	0	0	0	0	0	0	0	0	24
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Other	7	41	8	8	1	0	0	0	0	1	0	0	0	0	0	65
One-off costs	7	41	8	7	0	0	0	0	0	0	0	0	0	0	0	60
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
<b>Total</b>	<b>37</b>	<b>244</b>	<b>77</b>	<b>69</b>	<b>33</b>	<b>33</b>	<b>27</b>	<b>27</b>	<b>27</b>	<b>28</b>	<b>27</b>	<b>27</b>	<b>20</b>	<b>20</b>	<b>15</b>	<b>609</b>

<sup>499</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

Figure 12. One off costs and recurrent cost of public authorities and financial providers attributable to the DMFSD – high demand (millions of euros, prices of 2018)<sup>500</sup>

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	NPV
One-off costs	35	222	48	36	0	0	0	0	0	1	0	0	0	0	0	326
Financial providers	31	222	48	36	0	0	0	0	0	1	0	0	0	0	0	321
Public Administrators	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Recurrent costs	3	39	53	59	59	59	49	49	48	49	49	49	36	35	26	510
Financial providers	3	38	51	57	57	57	47	47	47	47	47	47	34	33	25	490
Public Administrators	0	1	2	2	2	2	2	2	2	2	2	2	2	2	2	20
<b>Total</b>	<b>39</b>	<b>262</b>	<b>100</b>	<b>95</b>	<b>59</b>	<b>59</b>	<b>49</b>	<b>49</b>	<b>48</b>	<b>50</b>	<b>49</b>	<b>49</b>	<b>36</b>	<b>35</b>	<b>26</b>	<b>837</b>
Financial providers	34	260	99	93	57	57	47	47	47	48	47	47	34	33	25	812
One-off Costs	31	222	48	36	0	0	0	0	0	1	0	0	0	0	0	321
Recurrent Costs	3	38	51	57	57	57	47	47	47	47	47	47	34	33	25	490
Public Administrators	5	1	2	2	2	2	2	2	2	2	2	2	2	2	2	25
One-off Costs	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Recurrent Costs	0	1	2	2	2	2	2	2	2	2	2	2	2	2	2	20
<b>Total</b>	<b>39</b>	<b>262</b>	<b>100</b>	<b>95</b>	<b>59</b>	<b>59</b>	<b>49</b>	<b>49</b>	<b>48</b>	<b>50</b>	<b>49</b>	<b>49</b>	<b>36</b>	<b>35</b>	<b>26</b>	<b>837</b>
Pre-contractual information	14	107	53	53	40	40	31	31	31	32	32	32	20	19	11	447
One-off costs	12	80	18	13	0	0	0	0	0	0	0	0	0	0	0	117
Recurrent costs	2	27	35	40	40	40	31	31	31	32	32	32	20	19	11	329
Right of withdrawal	14	97	35	32	18	18	16	16	16	17	16	16	15	15	14	295
One-off costs	13	85	19	13	0	0	0	0	0	0	0	0	0	0	0	124
Recurrent costs	1	12	16	18	18	18	16	16	16	16	16	16	15	15	14	171
Unsolicited communications and services	3	16	4	3	1	0	0	0	0	1	0	0	0	0	0	29
One-off costs	3	16	3	3	0	0	0	0	0	0	0	0	0	0	0	24
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Other	7	41	8	8	1	0	0	0	0	1	0	0	0	0	0	65
One-off costs	7	41	8	7	0	0	0	0	0	0	0	0	0	0	0	60
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
<b>Total</b>	<b>39</b>	<b>262</b>	<b>100</b>	<b>95</b>	<b>59</b>	<b>59</b>	<b>49</b>	<b>49</b>	<b>48</b>	<b>50</b>	<b>49</b>	<b>49</b>	<b>36</b>	<b>35</b>	<b>26</b>	<b>837</b>

<sup>500</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.



## 5. NET BENEFITS

The net benefits attributable to the DMFSD are equal to the benefits attributable to the DMFSD and the costs (for public administration and financial providers) attributable to the DMFSD (see above). The next figures show the evolution of the net benefits of the DMFSD overall and per key provision with low demand and with high demand.

*Figure 13. Overview of net benefits to costs attributable to the DMFSD (2004-2018)*

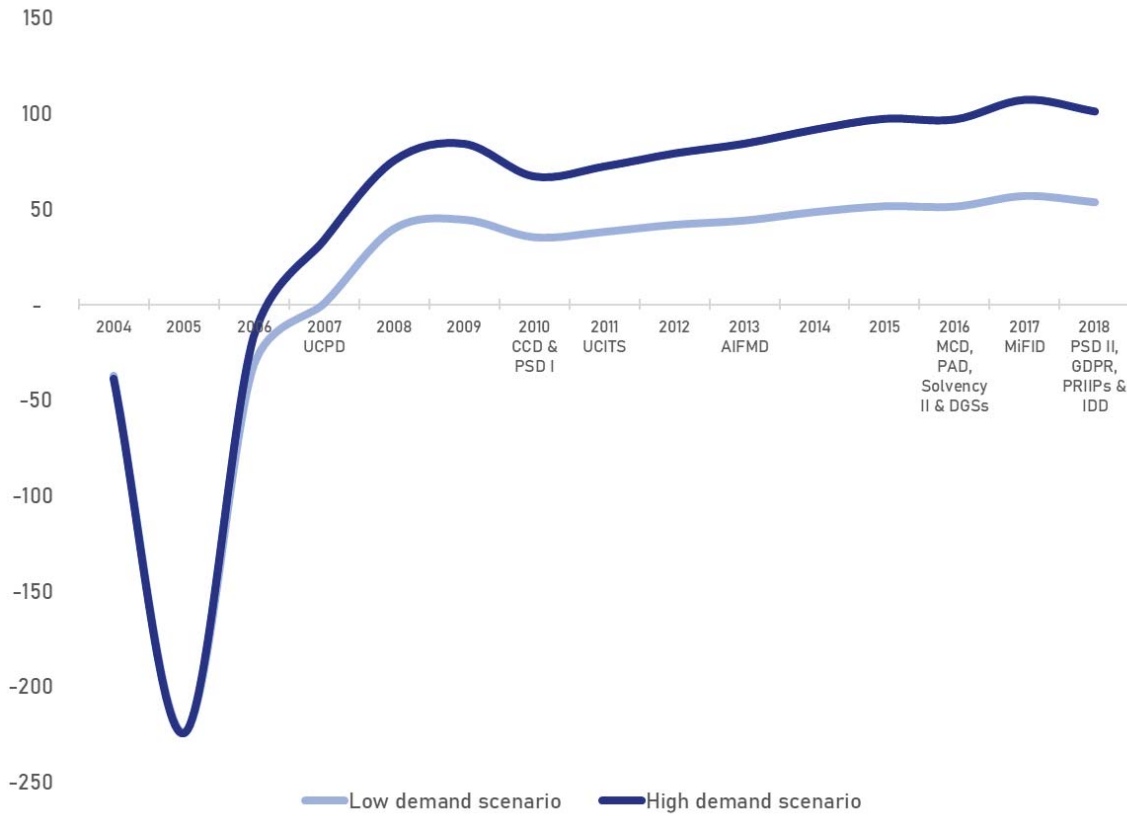


Figure 14. Overview of the net benefits per key provision of the DMFSD (EUR million, 2018 prices) – **Low demand** scenario

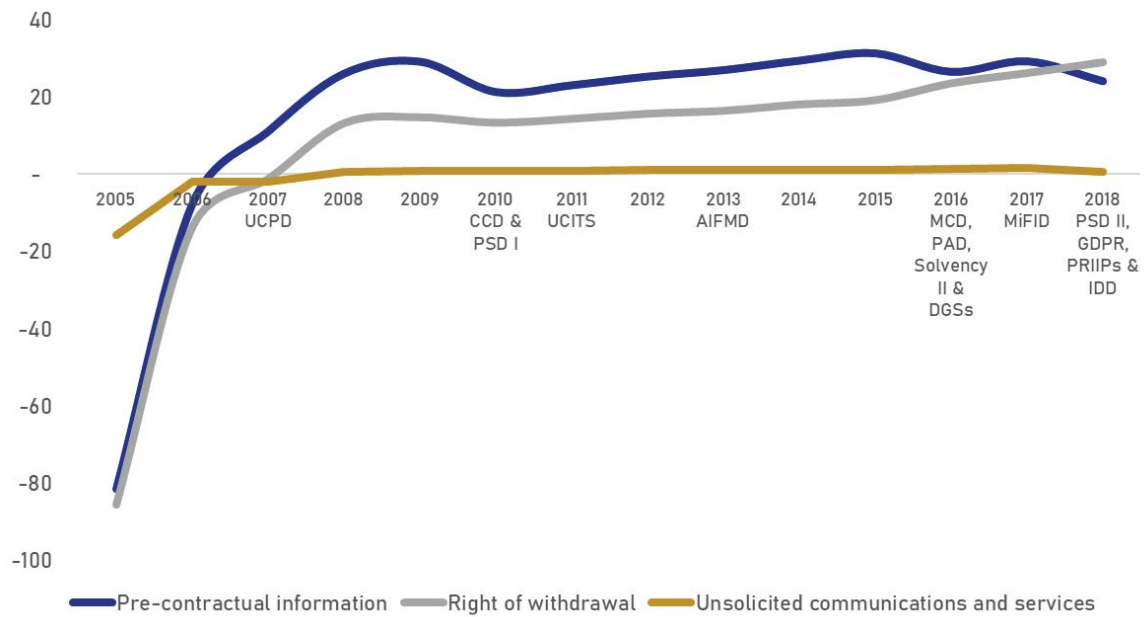


Figure 15. Overview of the net benefits per key provision of the DMFSD (EUR million, 2018 prices) – **High demand** scenario

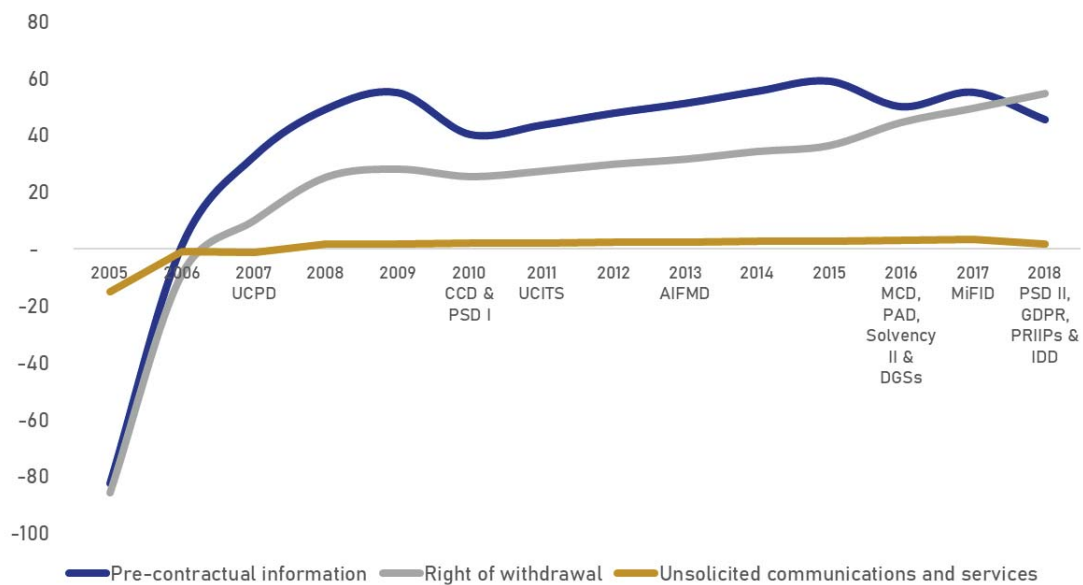


Figure 16. Net benefits attributable to the DMFSD – low demand (millions of euros, prices of 2018)<sup>501</sup>

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	NPV
<b>Pre-contractual information</b>																
One-off costs	12	80	18	13	-	-	-	-	-	0	-	-	-	-	-	117
Recurrent costs	1	14	19	22	22	22	17	17	17	17	17	17	11	11	6	179
Benefits	-	13	29	46	48	51	38	40	42	45	47	49	37	40	30	414
<b>Net benefits</b>	<b>13</b>	<b>82</b>	<b>8</b>	<b>11</b>	<b>26</b>	<b>29</b>	<b>21</b>	<b>23</b>	<b>25</b>	<b>27</b>	<b>29</b>	<b>31</b>	<b>27</b>	<b>29</b>	<b>24</b>	<b>117</b>
<b>Right of withdrawal</b>																
One-off costs	13	85	19	13	-	-	-	-	-	0	-	-	-	-	-	124
Recurrent costs	1	7	9	10	10	10	9	9	9	9	9	9	8	8	8	94
Benefits	-	6	14	22	23	25	22	23	25	26	27	28	32	34	37	250
<b>Net benefits</b>	<b>13</b>	<b>86</b>	<b>14</b>	<b>1</b>	<b>13</b>	<b>15</b>	<b>13</b>	<b>14</b>	<b>16</b>	<b>16</b>	<b>18</b>	<b>19</b>	<b>24</b>	<b>26</b>	<b>29</b>	<b>31</b>
<b>Unsolicited communications and services</b>																
One-off costs	3	16	3	3	-	-	-	-	-	0	-	-	-	-	-	24
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Benefits	-	1	1	1	1	1	1	1	1	2	2	2	2	2	1	15
<b>Net benefits</b>	<b>3</b>	<b>16</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>14</b>
<b>Other</b>																
One-off costs	7	41	8	7	-	-	-	-	-	0	-	-	-	-	-	60
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net benefits</b>	<b>7</b>	<b>41</b>	<b>8</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>65</b>
<b>Total</b>	<b>37</b>	<b>224</b>	<b>32</b>	<b>0</b>	<b>40</b>	<b>44</b>	<b>35</b>	<b>38</b>	<b>42</b>	<b>44</b>	<b>48</b>	<b>51</b>	<b>51</b>	<b>57</b>	<b>53</b>	<b>69</b>

<sup>501</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.

Figure 17. Net benefits attributable to the DMSF – high demand (millions of euros, prices of 2018)<sup>502</sup>

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	NPV
<b>Pre-contractual information</b>																
One-off costs	12	80	18	13	-	-	-	-	-	0	-	-	-	-	-	117
Recurrent costs	2	27	35	40	40	40	31	31	31	32	32	32	20	19	11	329
Benefits	-	24	54	85	89	95	72	75	79	83	87	91	70	74	57	771
<b>Net benefits</b>	<b>14</b>	<b>83</b>	<b>1</b>	<b>32</b>	<b>49</b>	<b>55</b>	<b>40</b>	<b>43</b>	<b>48</b>	<b>51</b>	<b>55</b>	<b>59</b>	<b>50</b>	<b>55</b>	<b>45</b>	<b>324</b>
<b>Right of withdrawal</b>																
One-off costs	13	85	19	13	-	-	-	-	-	0	-	-	-	-	-	124
Recurrent costs	1	12	16	18	18	18	16	16	16	16	16	16	15	15	14	171
Benefits	-	12	27	42	43	46	42	43	46	48	51	53	59	64	69	465
<b>Net benefits</b>	<b>14</b>	<b>86</b>	<b>9</b>	<b>10</b>	<b>25</b>	<b>28</b>	<b>25</b>	<b>27</b>	<b>30</b>	<b>32</b>	<b>34</b>	<b>36</b>	<b>44</b>	<b>49</b>	<b>55</b>	<b>170</b>
<b>Unsolicited communications and services</b>																
One-off costs	3	16	3	3	-	-	-	-	-	0	-	-	-	-	-	24
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Benefits	-	1	3	2	2	2	3	3	3	3	3	3	4	4	2	27
<b>Net benefits</b>	<b>3</b>	<b>15</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>
<b>Other</b>																
One-off costs	7	41	8	7	-	-	-	-	-	0	-	-	-	-	-	60
Recurrent costs	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	5
Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net benefits</b>	<b>7</b>	<b>41</b>	<b>8</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>65</b>
<b>Total</b>	<b>39</b>	<b>224</b>	<b>17</b>	<b>34</b>	<b>75</b>	<b>84</b>	<b>67</b>	<b>72</b>	<b>79</b>	<b>84</b>	<b>92</b>	<b>97</b>	<b>97</b>	<b>107</b>	<b>101</b>	<b>427</b>

<sup>502</sup> The calculations were based on numbers with 12 digit decimals. For presentation reasons the numbers were rounded. This leads to some minor differences between the presented individual values for each cost/benefit item and the combined values for their sum or difference.