



Brussels, 1 July 2019  
FINAL

## EACB response to the European Commission's online questionnaire on the evaluation of the Distance Marketing of Consumer Financial Services Directive (DMFSD)

1 July 2019

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 2,914 locally operating banks and 53,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 209 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 81 million members and 719,000 employees and have a total average market share of about 20%.

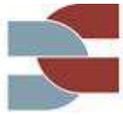
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**The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU**

**EACB AISBL** – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19  
[www.eacb.coop](http://www.eacb.coop) • e-mail : [secretariat@eacb.coop](mailto:secretariat@eacb.coop)



# Distance Marketing of Financial Services – evaluation of EU rules

## Introduction

The development of a deeper and fairer single market is one of the European Commission's key priorities. As part of this objective, the European Commission is working to help consumers to access good quality financial services offered outside their home Member State.

Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 on distance marketing of consumer financial services ("the Directive") aims to ensure the free movement of financial services in the single market by harmonising consumer protection rules governing this area.

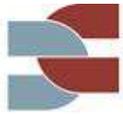
The Directive sets out what information a consumer should receive about a financial service and its provider before concluding a distance contract. For certain financial services, it also gives the consumer a 14-day right of withdrawal. In addition, the Directive bans services and communications from suppliers that a consumer has neither solicited nor consented to.

The Commission's 2017 Consumer Finance Action Plan sets out different actions to improve consumer experience in the field of financial services. Of particular note is the Commission's intention to monitor the distance selling market. This will enable the Commission to identify potential consumer risks and business opportunities in the market and, on that basis, decide whether there is a need to amend the requirements on distance selling (including disclosure).

A first step in this work has been to launch a behavioural study on the digitalisation of the marketing and distance selling of retail financial services. Over the past years, the retail financial sector has gone increasingly digital, with new products and actors appearing, and new channels being used. The study provides valuable insights into the practices used online by providers and how they affect consumer decision-making. Since 2002, when the Directive was adopted, several pieces of product-specific EU legislation have been adopted in the areas of consumer credit, mortgages, payment accounts, payment services, insurance products and investment products. These acts specify, for instance, the type of information a consumer should receive about a product and its provider. The legal framework also includes general consumer protection rules on unfair commercial practices and unfair contract terms, as well as rules on the e-commerce framework, data protection and e-privacy.

Some 17 years after the adoption of the Directive, the Commission is launching a second evaluation to assess whether the Directive is still fit for purpose given all the market developments that have occurred since 2002. A first evaluation, carried out in 2009, pointed to the efforts made to regulate specific financial services at EU level and to the need to monitor evolutions in the market, especially given the development of e-commerce.

This public consultation is an opportunity for consumers, retail financial services professionals, national authorities and any other interested stakeholders to give their opinions on how well they think the Directive is functioning. The results of this consultation will help the Commission assess the Directive's coherence, effectiveness, efficiency, relevance and EU added value.



The consultation consists of two short questionnaires. The first (set out in Part I) is aimed at the general public. The second (set out in Part II) is for other stakeholders such as associations, authorities and financial services providers.

The public consultation will be available in all 24 official languages of the EU.

Shortly after the close of the consultation, the Commission will publish a summary of the contributions received. In addition, opinions gathered through the public consultation will directly feed into the Commission's evaluation of the Directive, providing additional answers to the evaluation questions. The Commission will summarise the findings of the evaluation in a staff working document, which will include a summary of all consultation activities, including a specific summary of the open public consultation.

## Part II. Questionnaire for other stakeholders

### Questions on relevance

The relevance criterion in the Commission evaluation looks at the relationship between the needs and problems in society and the objectives of the Directive. It also involves considering how far the Directive's objectives correspond to wider EU policy goals and priorities.

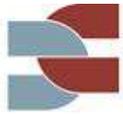
As a reminder, the Directive's aims are to:

- 1- harmonise consumer protection across the EU and guarantee a high level of consumer protection, which will generate consumer trust in the distance selling of financial services;
- 2- help consolidate the single market of financial services to ensure the free movement of retail financial services.

### **Question 1. Have the following developments changed the provision of distance retail financial services since 2002?**

	Totally agree	Somewhat agree	Somewhat disagree	Totally disagree	Do not know
The use of internet in the distance marketing and selling of financial services	X				
The use of new devices such as smartphones		X			
The profiling of consumers based on personal data			X		
New market players such as fintech providers; this includes the use of technology to improve and automate the delivery and use of financial services		X			
The adoption of product-specific legislation	X				
the level of competition in your country		X			
the level of cross-border competition			X		

Please mention any other developments you consider important:



We consider that cybercrime is another important developments to take into account. Banks have had to invest considerably to secure their websites, for example by creating online secure spaces where clients can drop their documents in order to prevent fraud.

We would also like to have the opportunity to comments on the following elements indicated in the above table: 'The use of internet and new devices', 'The level of competition in your country' and 'The level of cross-border competition'.

With regard to the use of internet and new devices, we would like to highlight that distance marketing is not limited to online use and new devices, or to digitalisation more in general, but still uses mail, phone and traditional media. A combined use of these channels will continue to be needed and there are no signs that digitalisation in itself is or will be the only solution to improve cross-border provision of financial services'.

With regard to competition at national level, this was already high before the introduction of the Distance Marketing of Financial Services Directive (DMFSD). Since then competition has increased not only from new players in national markets but also from well-established and traditional players, also due to the advent of digitisation.

Different considerations should be made with regard to cross-border competition. The European Commission often stresses the need for more cross-border activity in financial services. While this is an important element to fully complete the Single and Digital Markets, its pursuit per se doesn't have much sense.

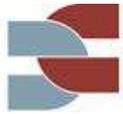
Three factors should be taken into consideration when assessing the level of cross-border activity:

- Gold-plating and other main barriers: for some of the DMFSD provisions, Member States' gold-plating practices have created fragmentation in the European market, thus undermining the development of cross-border activity in Europe. This concerns, in particular, the right of withdrawal.

EACB members believe that other main barriers are: different civil laws (e.g. Rome 1 Regulation), language, cultural behaviours, currencies, taxation, the consumer's need for a close relationship with the financial institution in order to trust it and the lack of harmonisation of debt recovery proceedings. Many Member States also confirmed this when answering the Commission's questionnaire about cross-border provision of retail financial products at the beginning of 2018 (see page 3 at the following link: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=17486>).

In addition, some of the abovementioned barriers have also been reported in the European Commission's behavioural study on the digitalisation of the marketing and distance selling of retail financial services (April 2019) and expressively mentioned by the European Supervisory Authorities (ESAs).

- The uptake of electronic identification (eID) under the eIDAS Regulation would help in facilitating cross-border activities. In this sense, EACB members support the Commission's will to facilitate the use of eID nationally and cross-border. Yet we believe the uptake of eID requires first political impetuous from the Member States, some of them dramatically lagging behind in terms of development of such techniques. However, eID alone will not eliminate barriers for online cross-border customer identification. Lack of mutual recognition or Know Your Customer practices and different implementation of AML rules are a barrier, too.
- Acknowledge that among EACB members' customers there is very low demand for cross-border operations. This is also true not only among EACB member but is also confirmed by a series of Eurobarometer surveys (i.e. 373 and 446), by the Commission's 2017 Consumer Financial Services Action Plan, which states that 'many consumers are satisfied with their domestic providers', and by the behavioural study published alongside the public consultation on the DMFSD.



Talking about competition in general, it is crucial to ensure fair competition and a level playing field between regulated financial service providers as well as between start-ups or big tech companies and traditional financial services providers engaging in similar activities. In particular, if start-ups and big tech companies act as providers of financial services and products, they should be subject to the same regulatory and supervisory requirements as credit institutions. This also applies to consumer protection. If simplifications and facilitation are provided in this area, they must be strictly risk-oriented and equally applicable to all providers. The principle of 'same products, same risks, same rules and same supervision' should apply.

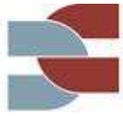
**Question 2. How relevant/up to date do you consider the following parts and provisions of the Directive in the current context?**

	Totally relevant	Somewhat relevant	Somewhat irrelevant	Totally irrelevant	Do not know
The scope of the Directive, i.e. covering banking, credit, insurance, personal pensions, investments and payment services		X			
The technology-neutral approach of the Directive	X				
Information to be provided about the provider	X				
Information to be provided about the financial service and its conditions		X			
How information should be provided over the phone		X			
The existence of a right of withdrawal for certain services		X			
Cancellation of payments made through fraudulent use of a payment card					
Ban on unsolicited services		X			
Ban on unsolicited communications		X			

Please explain your responses:

Horizontal scope: we indicated 'somewhat relevant' because back in 2002, date of the adoption of the DMFSD, many of the current product-specific legislation covering banking, credit, insurance, personal pensions, payments and investments) were not available. At present product-specific legislation like the Consumer Credit Directive (CCD), the Mortgage Credit Directive (MCD), the Payment Accounts Directive (PAD), the second Payments Services Directive (PSD2) and many others in the field of financial markets apply regardless of how the contract is concluded at a distance or in presence.

EACB members believe that the DMFSD maintains its added value as a horizontal legal framework providing a high level of consumer protection. Its application does not generate any fundamental problems and represents a safety net enabling the same high level of consumer protection in particular for products not covered by product-specific legislation, especially with the information to be provided about the providers, the financial service and the existence of a right of withdrawal. The DMFSD is a short, agile and simple Directive.



In many cases, the provisions concerning information obligations (Art. 3 of the DMFSD) merely duplicate the content already stipulated under other directives.

The issue is the DMFSD's interaction with product-specific legislation. Irrespective of their distribution channel, many if not all consumer-relevant financial services are now subject to a uniform European regime of detailed information obligations at different stages of customer on-boarding. The subject-specific pre-contractual information obligations essentially overlap with those under the DMFSD.

In principle, the European legislator recognises the primacy of the subject-specific directives (Recital 14 and Art. 4 .1 of the DMFSD) but only regulates an inconsistent rule-exception relationship to this extent, depending on the regulatory area, for example:

- Art. 14(7) MCD: 'The creditor and, where applicable, the credit intermediary or appointed representative who has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in Article 3(1) of Directive 2002/65/EC and shall be deemed to satisfy the requirements of Article 5(1) of that Directive only where they have at least supplied the ESIS prior to the conclusion of the contract.'
- Art. 5 CCD: '[...] The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.'
- Art. 39 PSD2: 'The provisions of this Title are without prejudice to any Union law containing additional requirements on prior information. However, where Directive 2002/65/EC is also applicable, the information requirements set out in Article 3(1) of that Directive, with the exception of points (2)(c) to (g), (3)(a), (d) and (e), and (4)(b) of that paragraph shall be replaced by Articles 44, 45, 51 and 52 of this Directive.'
- Recital 26 PRIIPs Regulation. The pre-contractual information obligations under securities law exist in addition to those under the DMFSD.

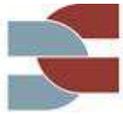
This being said, EACB members suggest the European Commission to try to avoid any over-exposure and duplication of information with that listed in the DMFSD and required by product-specific legislation. For example, by making the DMFSD application as subsidiary to the specific directives already enumerating information requirements independently from the distribution channel used.

Technology-neutral approach: EACB members believe that compared with some product-specific legislation, the DMFSD is sufficiently technology-neutral, therefore allowing providers to develop and adapt distance marketing of financial services through different distribution channels.

Information to be provided about the provider, the financial services and its conditions, information provided over the phone: Please read our answer under the 'Horizontal scope' level.

The existence of a right of withdrawal for certain services: As a general comment, EACB members believe that the right of withdrawal represents an important piece of the puzzle together with the information to be provided to consumers, to the DMFSD objective of having a high level of consumer protection in the EU.

Cancellation of payments made through fraudulent use of a payment card: we do not understand why this entry has been included in the table. Art. 8 of the DMFSD, which the sentence refers to, has been deleted in the DMFSD by Directive 2007/64/EC on payment services (PSD1) as there was a need for more detailed rules on this aspect, which is also currently covered by Directive (EU) 2015/2366 (PSD2).



Generally speaking, cancellation of payments made through fraudulent use of a payment card is a very relevant aspect. However, we did not make a choice in the above table as this aspect is no longer regulated by the DMFSD.

**Question 3. Are there any issues which the Directive currently does not address but you consider should be addressed?**

Yes	
No	X
Don't know	

If you answered “yes”, please specify:

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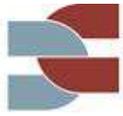
Questions on effectiveness

The effectiveness criterion in the evaluation considers how successful EU action has been in achieving or progressing towards its objectives.

**Question 4. How do you rate the effectiveness for consumer protection of the following elements/ features of the Directive?**

	Very effective	Somewhat effective	Somewhat ineffective	Totally ineffective	Do not know
The horizontal scope of the Directive, i.e. covering banking, credit, insurance, personal pensions, investments and payment services	X				
The technology-neutral approach of the Directive	X				
The level of harmonisation		X			
Information to be provided about the provider	X				
Information to be provided about the financial service and its conditions	X				
How information should be provided over the phone	X				
The existence of a right of withdrawal for certain services	X				
Cancellation of payments made through fraudulent use of a payment card					
Ban on unsolicited services	X				
Ban on unsolicited communications	X				

Please specify:



Horizontal scope: as per our answer to Question 2, EACB members believe that thanks to its horizontal nature, the DMFSD remains relevant as an horizontal framework and especially for those financial services not covered by product-specific legislation, making it instrumental in ensuring and guaranteeing a high level of consumer protection. The DMFSD is still a relevant instrument even if after its adoption in 2002, product-specific legislation governing financial services regardless of their distribution channels has been adopted.

Technology-neutral approach: Please refer to our answer to Question 2.

The level of harmonisation: for some of the DMFSD provisions, Member States' gold-plating practices have created fragmentation in the European market, thus undermining the development of full harmonisation in Europe. This concerns, in particular, the right of withdrawal.

For example, in Germany there is a peculiar situation whereby the right of withdrawal is often abused. Under German law, the customer has an unlimited right of withdrawal if, among other things, the customer has not properly received the information under the DMFSD. Since the requirements that could be imposed in Germany to comply with the DMFSD, there is a permanent risk that unlimited rights of withdrawal will also arise retrospectively in that Member State.

The focus should be on regulatory implementation.

Information to be provided about the provider, the financial services and its conditions, information provided over the phone: Please read our answer to Question 2.

The existence of a right of withdrawal for certain services: As a general comment, EACB members believe that the right of withdrawal represents an important piece of the puzzle together with the information to be provided to consumers, to the DMFSD objective of having a high level of consumer protection in the EU.

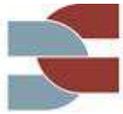
Cancellation of payments made through fraudulent use of a payment card: as per our answer to Question 2, we did not choose this entry because Art. 8 has been deleted and the issue is now dealt with by PSD2. Of course, we consider the principle in itself a fundamental principle to ensure the protection of the card user.

#### Questions on efficiency

When deciding whether to introduce a sector-specific regulation, the EU faces the challenge of balancing the potential benefits of the regulation against its potential costs. In the case of the Distance Marketing of Financial Services Directive, these costs include direct costs incurred by the financial service providers on compliance and administration, the national authorities' enforcement costs and the costs incurred by other businesses involved in distributing these services.

#### **Question 5. How would you rate the costs flowing from the various provisions of the Directive?**

	Very costly	Somewhat costly	Not costly	Do not know
Information to be provided about the provider		X		
Information to be provided about the financial service and the conditions attached		X		
How information should be provided over the phone		X		



The existence of a right of withdrawal for certain services		X		
Cancellation of payments made through fraudulent use of a payment card				
Ban on unsolicited services			X	
Ban on unsolicited communications		X		

Please explain your responses:

As a general comment, the implementation of the DMFSD was costly back at that time.

In general, the EACB finds that in some Member States 80% of co-operative banks' IT budget goes into regulatory compliance leaving only 20% of budget available for improving the business development and competition with other players. In general, EACB members would favour as much as possible regulatory certainty so as to be able to take a more long-term perspective of how to develop their business and rebalance budget spent on regulatory compliance with that on improving the service offering.

Should the European Commission take into consideration the Recommendations and remedies suggested by the behavioural study on the digitalisation of the marketing and distance selling of retail financial services published alongside this consultation, EACB members kindly invite the European Commission, before introducing possible new and stricter information requirements like those suggested in the behavioural study (see Recommendation 2 and 3), to make a thorough assessment of the burden placed on banks versus the benefits to be gained in case new requirements are introduced, which is missing in the study.

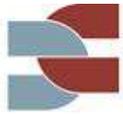
Information to be provided about the provider, the financial services and its conditions, information provided over the phone: We indicated 'somewhat costly' because banks have supported significant high costs of upgrading and maintaining information systems as well as high production costs.

The existence of a right of withdrawal for certain services: We indicated 'somewhat costly' because at the time of the introduction of the right of withdrawal, the DMFSD provisions required adaptation and revision of the documentation of the existing rights of withdrawal.

Cancellation of payments made through fraudulent use of a payment card: As said in our previous answers related to topic, this aspect is no longer regulated by the DMFSD. Of course, EACB members support this principle. However, it should also be recognised that the need for reimbursement, at the burdensome conditions subsequently introduced by PSD1 and PSD2, is considered very expensive, as it requires the commitment of banks' financial resources both to restore the consumer and to carry out the necessary technical analyses to verify the fraudulent situation and its causes.

Ban on unsolicited services and communications: Compliance with the law requires mere abstention from the activation of unsolicited services and communications and the sending of tools and documents to the consumer. It is believed that any reasoning regarding "lost profits" for banks should be considered irrelevant for the purposes of the reply.

In addition and finally, electronic signature should be simplified as the digital signing of contracts is still burdensome and costly.



**Question 6. To what extent are these costs generated by the Directive rather than by product-specific legislation?**

The main cost related to the issue listed in Question 5 are mainly generated by the DMFSD and in particular, from Member States' transposition of the directive.

**Question 7. How would you rate the following benefits of the Directive?**

	Very beneficial	Somewhat beneficial	Not beneficial	Do not know
Information to be provided about the provider		X		
Information to be provided about the financial service and the conditions attached		X		
How information should be provided over the phone		X		
The existence of a right of withdrawal for certain services		X		
Cancellation of payments made through fraudulent use of a payment card				
Ban on unsolicited services		X		
Ban on unsolicited communications		X		

Please explain your responses:

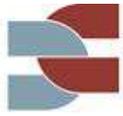
Information to be provided about the provider, the financial service and the conditions attached, and information should be provided over the phone: As a general comment, EACB members believe that in principle, the harmonisation of the information given to consumers is a good principle that goes in the direction of ensuring a high level of consumer protection.

For a more detailed answer, please read our answer to Question 2.

The existence of a right of withdrawal for certain services: As a general comment, EACB members believe that the right of withdrawal represents an important piece of the puzzle together with the information to be provided to consumers, to the DMFSD objective of having a high level of consumer protection in the EU. EACB members find this right beneficial for consumers. However, we would like to report that in some Member States, due to gold-plating, this right is often abused.

In some Member States, for example, some national measures added to the CCD provisions during the transposition process have disrupted the consumer credit market by reducing the production of some products, which severely impacted institutions' turnover.

Cancellation of payments made through fraudulent use of a payment card: As said in all our answers relating to this topic, we did not select this as this aspect is now regulated by PSD2. However and in general, we consider this principle very beneficial in terms of protecting consumers as it provides a right to reimbursement from fraudulent transactions.



Ban on unsolicited services and communications: it is believed that the benefits for consumers are relevant in terms of protection as they provide for an obligation of abstention from invasive practices and with a direct impact on the customer's economic resources.

**Question 8. To what extent are these benefits generated by the Directive rather than by product-specific legislation?**

Benefits are mainly generated by the Directive.

**Question 9. Overall, do the benefits of the Directive outweigh its costs?**

Yes	X
No	
No opinion/ Don't know	

Please specify:

EACB members believe that the DMFSD has had the benefit of creating a legal framework governing the distance marketing of financial services ensuring a high level of consumer protection. The DMFSD is simple and technology neutral.

The implementation costs should not be underestimated (see also our answer to Question 5). In general, EACB members would favour as much as possible regulatory certainty so as to be able to take a more long-term perspective of how to develop their business and rebalance budget spent on regulatory compliance with that on improving the service offering.

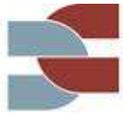
Finally, although the DMFSD is still valid, its interaction with product-specific legislation made the DMFSD less important. Indeed, as said in our answer to Question 2 after its adoption, other product-specific legislation (e.g. CCD, MCD, MiFID2, PSD2, etc.) – regardless of the distribution channels used – has been adopted. Some aspects (e.g. provisions of information) represent a burden for both financial institutions (having to upgrade and maintain information systems – which implied sensible costs – and duplicate the information to be provided to consumers) and consumer (having to read pages of documents).

**Question 10. Are there any areas in the Directive where there is room for simplification or reduction of costs?**  
Please specify:

Ensuring that existing legislation is rigorously enforced would bring convergence of practices and cost reduction in the EU.

#### Questions on coherence

The evaluation of coherence involves looking at how well different actions work together. Since the adoption of the Directive, several product-specific pieces of legislation have come into force, covering consumer credit, mortgages, payment accounts, payment services, insurance products and investment products. Other pieces of legislation interacting with the Directive include general consumer protection rules on unfair commercial practices and unfair contract terms, and those pertaining to the e-commerce framework and data protection.

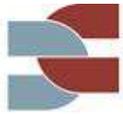


**Question 11. To what extent is the Directive coherent with other EU legislation:**

	Very coherent	Somewhat coherent	Somewhat incoherent	Very incoherent	Do not know
Consumer Credit Directive (CCD)		X			
Mortgage Credit Directive (MCD)		X			
Payment Accounts Directive (PAD)		X			
Payment Services Directive (PSD)		X			
Insurance Distribution Directive (IDD)		X			
Market in Financial Instruments Directive (MiFID)		X			
Undertakings for the collective investment in transferable securities Directive (UCITS)		X			
Key information documents for packaged retail and insurance-based investment products Regulation (PRIIPS)		X			
Prospectus Regulation		X			
Alternative investment fund managers Directive (AIFM)		X			
Unfair Commercial Practices Directive (UCPD)		X			
Unfair Contract Terms Directive (UCTD)		X			
GDPR		X			
ePrivacy Directive (EPD)		X			
e-Commerce Directive (ECD)		X			
Geo-blocking Regulation		X			

For each of the legal acts listed above, please specify in which respect(s) you consider it is coherent or not with the Directive:

- Each product-specific legislation requires the provision of pre-contractual information in addition to the pre-contractual information required by the directive. Please see also our answers to Questions 2, 4 and 7.
- The definition of 'durable medium' across some product-specific legislation: Recital 20 of the DMFSD lists as examples 'floppy discs, CDROMs, DVDs and the hard drive of the consumer's computer on which the electronic mail is stored' but excludes 'Internet websites unless they fulfil the criteria contained in the definition of a durable medium'. Therefore, internet websites are not covered by the notion of 'durable medium' unless they fulfil the storability and unchanged reproduction core criteria of the definition. We believe that this is inconsistent with Recital 57 of PSD2, which explicitly includes as an example of 'durable medium' those 'internet sites' that 'are accessible for future reference, for



*a sufficient period of time for the purposes of accessing the information and provided that these sites allow the reproduction of the information stored there in an unaltered form'* (see also the September 2016 opinion of the advocate general Bobek in the case C-375/15 v Verein für Konsumenteninformation, which refers to Recital 24 of PSD1, which is similar to Recital 57 of PSD2). The CCD, in its Article 3(m), replicates Art. 2(f) of the DMFSD without mentioning Recital 20. And the MCD refers to the definition in the CCD.

With regard to the 'durable medium', but not linked to the coherence aspect, we would like to report that as a consequence of Member States' over-transposition, the 'durable medium' has been further detailed. We believe this instrument should not be further specified by Member States. A bank should be free to choose whatever type of durable medium fulfilling the core criteria of the definition (i.e. storability and unchanged reproduction) by also taking into consideration consumers' needs and the bank's own cost-benefit analysis.

**Question 12. Given that the Directive applies to different products, does it bring any additional value compared to product-specific legislation? Please give details for your answer.**

The DMFSD maintains its added value as a general framework, protective of consumers, simple and technology-neutral. It also represents a safety net enabling the same high level of consumer protection especially for products not covered by product-specific legislation.

Please see also our answer to Questions 2, 4, 7 and 9.

We suggest the European Commission try to avoid any over-exposure and duplication of information with that listed in the DMFSD and required by product-specific legislation, for example, by making the DMFSD subsidiary to the specific Directives already enumerating information requirements independently from the distribution channel used.

**Question 13. Are you are aware of any contradictions/overlaps/inconsistencies/missing links between the Directive and national legislation? If so, what are they?**

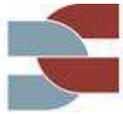
Consumer Rights Directive (CRD): The CRD in principle does not apply to consumer financial services. However, in some Member States, Recital 32 of the CRD – in particular the sentence *'With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured'* – has been transposed taking some CRD provisions as a reference for rules in financial services. This leads to EU-wide distortions of competition and ultimately prevents precisely the approximation of laws within the EU desired by the European legislator.

We would like to stress that in some Member States and for some aspects, national authorities have gone too far in detailing aspects of the DMFSD. Member States' gold-plating practices have created fragmentation in the European market, thus undermining the development of cross-border activity in Europe. This concerns, in particular, the right of withdrawal (see also our answer to Question 4 under the level of harmonisation entry).

#### Questions on EU added value

In any policy initiative, the Commission must consider whether there is added value in tackling certain issues at EU level or whether it would be better for them to be dealt with by the Member States.

**Question 14. In your view, 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?**



	High added value	Medium added value	Low added value	Do not know
Better consumer protection	X			
Better functioning of the single market		X		
Legal clarity	X			
Help in addressing cross-border problems			X	

Please explain your responses:

We believe that the DMFSD has created a horizontal legal framework, enhancing legal clarity and a better functioning of the single market for banks and customers, for financial services sold at a distance and consequently a higher level consumer protection.

With regard to the cross-border dimension, as per our answer to Question 1, three aspects should be taken into account: gold-plating and other main barriers such as different civil laws (e.g. Rome 1 Regulation), language, currencies, taxation, the consumer's need for a close relationship with the financial institution in order to trust it and the lack of harmonisation of debt recovery proceedings; the scarce uptake of electronic identification (eID) under the eIDAS Regulation. However, eID alone will not eliminate barriers for online cross-border customer identification. Lack of mutual recognition or Know Your Customer practices and different implementation of AML rules are a barrier, too. Finally, there is very low demand for cross-border operations.

We would like to conclude by saying that the DMFSD represents a safety net enabling the same high level of consumer protection especially for those products that are not covered by product-specific legislation and for the fact that until now it is the only directive expressly mentioning that the information referred to Art. 3.2 should be provided '[...] in a way appropriate to the means of distance communication used', giving a certain degree of flexibility as to how the information should be provided.

#### Other questions

**Question 15.** Are there any other issues not covered by the above questions that you feel might require action at EU level? What would be your preferred solution to the identified issue?

No.

#### **Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department ([marieke.vanberkel@eachb.coop](mailto:marieke.vanberkel@eachb.coop))
- Ms Chiara Dell'Oro, Senior Adviser, Retail Banking and Consumer Policy ([chiara.delloro@eachb.coop](mailto:chiara.delloro@eachb.coop))