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EACB Position Paper on the European Commission's public consultation on the evaluation of the Distance Marketing of Financial Services Directive (DMFSD)

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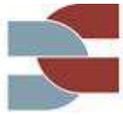
The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks 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

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Introduction

The European Association of Co-operative Banks (EACB) welcomes the opportunity to provide its additional comments to the Commission's online questionnaire on the evaluation of the Distance Marketing of Financial Services Directive (DMFSD).

This paper summarises and complements our response to the European Commission's questionnaire. It also provides comments on some of the specific conclusions and recommendations listed in the behavioural study on the digitalisation of the marketing and distance selling of retail financial services published alongside the public consultation.

General observations

Co-operative banks support the European Commission's objective to foster a competitive and effective Single Market for retail financial services, which will benefit consumers but also facilitate the conduct of business for European banks.

As detailed in our response to the questionnaire, among the factors that have an impact on the level of cross-border supply, customers' very low demand for cross-border operations is very important to consider alongside barriers such as language, cultural behaviours, currencies, taxation, different civil laws (e.g. Rome 1 Regulation) and the lack of harmonisation of debt recovery proceedings.

Moreover, as per the implementation of the Consumer Credit Directive and other product-specific legislation, also for some of the DMFSD provisions, Member States' gold-plating practices have created some unwanted fragmentation in the European market. This concerns, in particular, the right of withdrawal.

EACB members believe that the 2002 DMFSD is still a relevant instrument. Its application does not generate any fundamental problems and continues to serve its purpose to create a horizontal legal framework (especially with the information to be provided about the providers, the financial service and the existence of a right of withdrawal) and a high level of consumer protection.

The Directive is short, simple and sufficiently technology-neutral. Importantly, it allows providers to develop and adapt distance marketing to different distribution channels, thus reflecting new technologies and new consumer expectations. Such technology neutrality avoids the need to consistently adapt legislation.

The DMFSD's added value is especially evident as a safety net for products that are not covered by product-specific legislation, ensuring the same high level of consumer protection. In addition, 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.

After the DMFSD's adoption and over the years, however, product-specific legislation was proposed, adopted and entered into force, including: the Consumer Credit Directive (CCD), the



Mortgage Credit Directive (MCD), the Payment Accounts Directive (PAD), the Payments Services Directive (PSD) 1 and 2 and many others in the field of financial markets (MiFID, PRIIPS, etc.).

These product-specific pieces of legislation regulate specific aspects (e.g. information requirements) and rights (e.g. right of withdrawal) regardless of the products/service being marketed at a distance or in person. This has led to some duplication and some overlap in requirements with the DMFSD in some areas.

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 (presently 80% vs 20% for some banks).

Should the European Commission take into account the various recommendations and remedies envisaged in the study, EACB members urge that any considerations be focused on addressing the following points:

- Ensuring that existing legislation is rigorously enforced (Recommendation 1), allowing a level-playing field. This is an indispensable prerequisite before any reflection on a change in any legislation should be considered.
- Clarifying the interplay of the DMFSD's provisions with those of product-specific legislation.
- Trying 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.
- Making a thorough assessment of the burden placed on banks in case the new requirements suggested in Recommendation 2 are introduced, which is missing in the study.
- Monitoring technological developments and designing technology-neutral legislation (Recommendation 7). We fully support the desire to develop technology-neutral legislation that is overarching and sufficiently versatile to protect consumers irrespective of new technologies that may arise in the market.
- Considering awareness raising through some form of education – perhaps digital/contractual rather than purely financial to be started in schools from an early age. (see our comments to Recommendation 4).

EACB comments on the Recommendations

In this section, we provide specific comments on some of the conclusions and recommendations suggested in the behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

- **Recommendation 1:** EACB members welcome the first step suggested by the behavioural study, i.e. that the European Commission could raise Member States' awareness of the importance of enforcement activity.



We believe that Recommendation 1 should be primarily achieved through raising awareness. If building awareness fails, only then should coordinated enforcement activities, such as sweeps, be initiated. Indeed, co-operative banks believe that better implementation and enforcement are key. Attention, time and energy should then be devoted in making Member States compliant with the existing DMFSD rules as well as with product-specific legislation.

As mentioned earlier in the paper, we would like to stress that for some DMFSD provisions, Member States' gold-plating practices have created fragmentation in Europe, added costs and limited the effects of EU legislation in building the Single Market.

➤ **Recommendation 2** (pages 136-138 and Conclusions 4, 5, 6, 7, 8, 9, 10 pages 129-132)

Keeping up with changes in legislation is becoming increasingly burdensome. About 80% of IT budgets of some banks go to legislation requirements leaving little left for own strategic choices. EACB members thus believe that the choice to adjust legislation should be made very carefully, especially considering that overall the Directive continues to serve its purpose.

Should the European Commission's evaluation process suggest that the DMFSD be revised, before introducing possible new information requirements like those suggested in the behavioural study, we kindly invite the European Commission to make a thorough assessment of the burden placed on banks versus the benefits to be gained in case the new requirements are introduced either in the DMFSD or in product-specific legislation, which is missing in the study.

We would also like to stress, as pointed out in the behavioural study, that informed decisions often result from the quality of information and not the quantity. We believe that the DMFSD is simple, short and the information requirements set in the Directive do not represent per se a burden for banks.

Some EACB members would consider with an interest a clarification of the interplay of the DMFSD's provisions with those of product-specific legislation, as suggested in the behavioural study.

With regard to some specific remedies suggested under this Recommendation, we would like to highlight the following:

- EU level guidance to promote best practices in information provision may not adequately reflect national contexts and will thus prove of limited relevance. It could unnecessarily increase the process and thus ultimately have a negative impact on clients' experiences. Moreover, considering that EU product-specific legislation (MiFID, PRIIPS, IDD, Prospectus Directive, etc.) already have a very prescriptive requirements on information provisions and the need for additional guidance is not proven.
- The introduction of information format requirements through product specific-legislation presents a risk of standardisation of information with expensive IT



requirements. The printing equipment available in bank branches would not always respect the required format. Moreover, we want to make the Commission aware that in some Member States, banks – in addition to the already standardised documents (ESIS, FID, SoF, etc.) – have to provide additional documents as required by some authorities. This increases the risk of inconsistencies and overlaps between these documents as well as the risk that the information provided to the consumer is excessive, unclear and difficult to compare between financial service providers.

- The provision of comparison tables is problematic as not all products of the same “type” have directly comparable characteristics.
- The requirement to present information at the start of the pre-contractual phase for each product is contrary to the current MCD provisions, in particular those requiring the provision of the standardised information form (ESIS) at the latest at the time of issuance of the credit offer (Article 14.3(a) of the MCD).
- EACB members believe that in general there is a need to adapt information banks provide to users’ devices. But this should be let to the market to decide. Moreover, we believe that specifying in the legislation how to adapt the information to different devices would not be the right solution as it would not be technology-neutral and would therefore not be scalable. For example, regulating how things should be presented in mobile applications may hinder the future development of products and services. Regardless of the user’s device, compliance with the Unfair Commercial Practices Directive already entails an obligation for clarity and intelligibility of information.

➤ **Recommendation 3** (page 138 and Conclusion 7, pages 130-131)

As also shown by the results of the experiments made in the framework of the European Commission’s behavioural study, *‘vulnerable consumers with low digital or financial literacy were significantly less likely to select the correct option in both experiments’*. EACB members believe in the importance of not only understanding finance and related financial services but also who and what consumers are dealing with when engaging in contracts regarding financial services in an increasingly complex digital environment. Awareness raising through some form of education – perhaps digital/contractual rather than purely financial – needs to be considered. Such education must start in schools from an early age. It should be included in school curricula. Member States can address this issue by changing the priorities of the curricula for schools. More in general, financial service providers in the different Member States have their own initiatives and promote this issue in many ways.

The study also reports a recommendation suggested by BEUC that the Commission could develop simpler financial products *‘(e.g. with a simple design and fewer characteristics), since this could help vulnerable consumers to more easily understand such products and compare them’*. In addition to what the study says *‘the benefits of making such a requirement should be considered together with the burden it creates for firms’*, we would also like to stress that encouraging the development of simpler products suggests that the relative complexity of certain products is not justified. Banks have no interest in building complex offers that are difficult to understand and require heavy investment in advisers’



training. Complexity is often a consequence of tax rules, product improvements or customers' own needs (Socially Responsible Investment). Systematising simplicity could thus lead to limitations in the range of offers as well as weaken competition. Finally, banks already offer a set of simple products (at least a basic payment account and a simple saving account).

➤ **Recommendation 4** (page 138 and Conclusion 11 pages 133-134)

This recommendation should not disregard consumers' demand for a more fluid, agile, intuitive and ergonomic customer experience. Each new active request or any disruption during the customer's journey causes impatience and fatigue from the consumer's perspective.

We are in particular concerned by the third step included in the recommendation, i.e. legislation to tackle the speed of the purchasing process, which would unduly hamper the uptake of digital solutions. If, for example, a provision were to be introduced mandating a minimum time of 20 minutes for any purchasing process, such legal provisions would not only place additional burden on banks but also discourage the digital channel as such. EACB members believe that customers' understanding is vital; however, slowing down the purchasing process is not the way to achieve this goal – customers using distance selling services do so with the aim of speeding up the purchasing process.

Banks are investing heavily to improve and streamline customer journeys to meet a need clearly expressed by consumers that is not specific to the financial sector. Slowing down the purchasing process for financial products and services would force banks in a position where they would have to offer a bad customer experience in a world where customer experience is a key competitive edge. Moreover, it will limit future development of products and services, given that we do not know what technical solutions might be in the near future.

➤ **Recommendation 5** (pages 138-139 and Conclusion 13 page 134)

As stated in our general observations, credit institutions are already required to provide an appropriate level of information both before and after the conclusion of a contract under different laws, both European and national, both horizontal and sectorial. Just to give a concrete example, in France, information requirements for the distance marketing of financial services are regulated by the French monetary and financial code, the consumer code, the commercial code and the insurance code. All these laws apply concurrently for the sale of the same product.

Introducing new additional requirements via EU legislation on transparency around targeting practices – as suggested by the study – means imposing new information obligations when the information is already heavy and costly, with little customer benefit. Explaining targeting is not necessary as bad targeting leads to the wrong offer for the customer, who will not subscribe to such offer. This in itself is enough to encourage banks to optimise their products and targeted marketing thereof.



Moreover, transparency around personalisation is already ensured under the General Data Protection Regulation (GDPR), which requires banks to explain the types of data involved, the purposes for the processing leading to personalised offers and the rules linked to profiling and automated decision-making. In addition, some EU product-specific legislation (e.g. MiFID and IDD) required professionals to justify the adequacy of the service/product to the profile of the customer (an unavoidable step to make before any proposal). Banks need to make sure that the product/service is suitable to customers' needs.

➤ **Recommendation 6** (page 139 and Conclusion 15 page 135)

With regard to this recommendation, co-operative banks already develop and provide simple tools. It is also in their interest to make the purchasing process easier.

➤ **Recommendation 7** (page 139)

EACB members welcome the European Commission's and the European Supervisory Authorities' (ESAs) work on Financial Technology, in particular the effort made in monitoring and assessing how the advent of new technology might have impacted financial services.

Co-operative banks also believe that designing technology-neutral legislation is fundamental for both businesses and consumers. The DMFSD represents a good example of sufficiently technology-neutral legislation.

Contact:

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

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