

The Directive on Distance Marketing of Consumer Financial Services: open public consultation

Fields marked with * are mandatory.

Introduction

Directive [2002/65/EC](#) on Distance Marketing of Consumer Financial Services ('Directive') lays down rules on three key areas (pre-contractual information; right of withdrawal; ban of unsolicited services) concerning the distance marketing of consumer financial services. Any service of a banking, credit, mortgage, insurance, personal pension, investment or payment nature falls under the scope of Directive whenever the financial service is purchased at a distance.

The Directive aims at promoting the free movement of financial services in the single market by harmonising consumer protection rules governing this area. The Directive sets out a list of information items concerning the financial service that the consumer should receive before the distance contract is concluded.

The Directive applies horizontally across all EU legislation in the field of financial services, as long as the product-specific legislation (e.g. Consumer Credit Directive or Mortgage Credit Directive) or horizontal legislation (e.g. the General Data Protection Regulation) does not provide specific and more detailed rules. In this regard, the Directive is considered to contain a 'safety net', in the sense that in the absence of present or future rules regulating the issues covered by the Directive, the latter will apply. Whereas the Directive had clear value added when it entered into force, many of its substantial elements have been taken over by sectoral legislation that has been adopted afterwards, e.g. in the context and aftermath of the financial crisis.

In the 2017 [EC Consumer Finance Action Plan](#), the Commission undertook to monitor the distance selling market of retail financial services in order to identify the potential consumer risks and business opportunities in this market and, on that basis, decide on the need to amend distance-selling requirements. In this context, a behavioural study was conducted: [Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services](#). On the basis of the Commission's [2019 Work Programme](#), the Commission launched an evaluation of the Directive. The [evaluation](#) found that the Directive has been partially effective in increasing consumer protection and is still of limited effectiveness in promoting the cross border delivery of financial services. While the Directive's objectives are still relevant, it is unclear to what extent it contributes to address the current challenges consumers face when purchasing a financial service at distance i.e. online or off premises. In particular, it found that digitalisation exacerbated some aspects not fully addressed by the Directive.

The Adjusted Commission 2020 Work Programme listed the Directive as subject to a "regulatory fitness"

exercise. In this context, the Commission will carry out an impact assessment to see whether and if so, how, to revise the Directive.

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 they think the Directive is functioning. The results of this consultation will help the Commission when drafting the Impact Assessment and assessing the Directive.

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.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak

- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Judith

* Surname

Crawford

* Email (this won't be published)

Judith.Crawford@e-ma.org

* Organisation name

255 character(s) maximum

Electronic Money Association

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)

- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

84308599569-14

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands

- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan

- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon
- Canada
- Cape Verde
- Cayman Islands

- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau

- Guyana

- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong

- Hungary

- Iceland
- India
- Indonesia
- Iran

- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma

- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua

- Niger

- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan

- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia

- Timor-Leste
- Togo

- Tokelau
- Tonga

- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands

- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
Ascension and
Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States
Minor Outlying
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Part I: General questions

If you are not replying as a member of the general public, please go to Part II.

In this part of the questionnaire, we would like you to share your experience of buying retail financial services such as consumer loans, insurance and bank accounts using means of distance communication such as the internet, telephone or postal services. This part of the questionnaire does not cover face-to-face interactions with a financial services provider.

1. Have you bought one or more of the below financial services by means of distance communication (e.g. through the internet by using your computer /smartphone/tablet, or through the telephone or through postal service) in the past 5 years?

	Yes	No
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance, etc.)	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>

Payment services (such as money transfer services)	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>

2a. If you bought one or more of the below financial services by means of distance communication in the past 5 years, how satisfied were you with the information (e.g. information on the identity of the service provider and on the product/service, information on your rights) received before you concluded the contact?

	Very Satisfied	Satisfied	Average	Not Satisfied
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your reply if you were dissatisfied with the information provided prior to the purchase of the financial service

2b. In your opinion, would your experience of contracting any of the financial services mentioned above have been smoother if (5=completely agree, 1=totally disagree):

	5 (Totally Agree)	4 (Agree)	3 (Neutral)	2 (Disagree)	1 (Totally Disagree)
The pre-contractual information was adapted to your device (e.g. the information would fit into your smartphone)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The main information on the financial service provided at pre-contractual stage would be visible at a glance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The pre-contractual information provided by different suppliers would be provided side-by-side or through a comparison website	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The pre-contractual information contained certain key information which highlighted in a prominent way (e.g. fees, charges)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Additional information would have been presented through the use of hyperlinks or sent separately e.g. in a pdf via email	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The pre-contractual information would have used simpler and more straightforward language	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3a. The Directive grants, for certain financial services a right of withdrawal to the consumer. If you bought one or more of the below financial services by means of distance communication in the past 5 years, how often, if ever, have you exercised your right of withdrawal?

	More than once	Once	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certain insurance products (e.g. car or home insurance)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3b. Would the right of withdrawal be easier to use if:

	Yes	No	Don't know
A reminder is sent to the consumers shortly (e.g. 3 days) before it expires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A withdrawal form is provided whenever a financial service contract is concluded	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It is already easy to use and thus, no additional requirement is needed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4. The Directive exempts the consumer from any obligation in the event of unsolicited supplies (e.g. you are given a credit even though you did not request it). In the past five years, how often, if ever, have you been provided, without your request, with any of the below financial services?

	More than once	Once	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain the outcome if you were supplied with any of the above financial service in an unsolicited manner:

5. If you purchased your financial service by means of distance communication, which of the below was/were the decisive factor(s) to conclude the contract at distance rather than in a shop or office?

at most 3 choice(s)

- It allows me to access offers from all over the European Union
- It allows me to access cheaper offers
- It allows me to compare offers more easily
- It allows me to access services that are better adapted to my needs
- It allows me to take more time to review the offers
- It means I can access the service 24 hours a day
- Other

Part II: Technical questions on the specific value added of the provisions of the Directive compared to other legal acts

This part is aimed at obtaining replies from experts and/or practitioners in the field (financial services providers, associations, authorities, academics). If you are a member of the general public, replies to Part I are enough and you do not need to reply to the forthcoming questions.

1. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on pre-contractual information stemming from the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain how the articles on pre-contractual information stemming from the Directive are still applied or enforced, providing the situation when it was applied or enforced:

Please note we are answering from the perspective of an industry association and not a financial services provider. We consider the pre-contractual information requirements under PSD2 are more extensive than information requirements set out in the DMD. The Commission’s evaluation report expressly states this point as follows:

Although the pre-contractual information to be provided under the PSD II is partly the same as under the DMFSD, the PSD II also contains more detailed information related to the specific elements of payment services such as the unique identifier that executes the payment order or the form of and procedure for giving consent to initiate a payment order.

As illustrated by this example, the information requirements under PSD2 provide the payment service user with more protection than the information requirements set out in the DMD as PSD2 is specifically tailored to payment services, whereas the DMD is general.

2. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on the right of withdrawal stemming from the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Payment services (such as money transfer services)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain how the right of withdrawal stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:

We wish to 'streamline' consumer requirements; we do not wish to curtail consumers' rights in any way. Accordingly, we acknowledge that, whilst the majority of the DMD has become irrelevant due to sector-specific legislation, the 14-day right to withdraw is one remaining aspect of the DMD which is still relevant and therefore must be retained. We consider the most straightforward way to do this would be to amend the relevant sector-specific legislation to include the 14-day right.

3. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited services of the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain how the article on unsolicited services stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:

We consider the issue of unsolicited services is sufficiently addressed by the provisions of the Unfair Commercial Practices Directive. The DMD prohibits the supply of financial services without the consumer's request for or consent to the services ; whereas the Unfair Commercial Practices Directives is more comprehensive by prohibiting misleading actions, misleading omissions and aggressive commercial practices.

4. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited communication of the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain how the article on unsolicited communication established by the Directive is still applied or enforced, providing the situation when it was applied or enforced:

We consider the issue of unsolicited communications is sufficiently addressed in existing regulations, and retaining the relevant provisions in the DMD would offer little value to consumers. The provisions of the GDPR relating to lawfulness of processing and consent are more comprehensive and stringent and therefore more effective in protecting persons from unsolicited communications than the DMD. Further, the E-Privacy Directive prohibits unsolicited communications for the purposes of direct marketing where the sender has not first obtained the consent of the subscriber.

5a. How useful is the ‘safety net’ feature of the Directive (i.e. the application of the Directive in those instances when new products appear on the market and are not yet subject to specific regulation and when the product specific legislation does not cover, or does not cover sufficiently, the rules established by the Directive) for the following financial services?

	Very useful	Useful	Not useful	Irrelevant
Consumer credits (including credit cards)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insurance products (e.g. car, home insurance etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Investment products (e.g. shares, bonds or funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Payment services (such as money transfer services)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Personal pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain

EMA members are regulated entities (electronic money institutions and payment institutions) accordingly, the majority of their products are regulated by EMD2 and PSD2 respectively.

We note the Commission’s example in the Impact Statement in relation to the DMD functioning as a safety net with respect to unregulated cryptocurrencies. Whilst the DMD may have functioned as a safety net in the

past, cryptocurrencies will soon be a regulated product and therefore have their own product-specific requirements (specifically, the Markets in Crypto-assets Regulation “MiCA”). We therefore consider it would not be proportionate to retain the DMD specifically for cryptocurrency.

5b. Can you provide concrete examples when you applied the rules of the Directive since they went beyond the rules covered by specific financial services legislation (e.g. the right of withdrawal for payment accounts contracted at a distance)?

The 14-day right of withdrawal is a good example of where the DMD goes beyond the consumer requirements set out in sector-specific legislation (in this case, PSD2). The 14-day right of withdrawal appears in the framework contract and the payment user may exercise this right and receive, for example, a refund on any initial fees they may have been charged for the relevant product or service. We consider the 14-day right of withdrawal to be the one remaining aspect of the DMD that is still effective and functions to protect consumers. We consider the remaining provisions (information requirements etc.) have been superseded by sector-specific legislation (such as PSD2) or horizontal legislation (such as the GDPR).

5c. Can you provide concrete examples when you applied the rules of the Directive for products which are exempt from the product specific legislation (e.g. payday loans, which are a type of credit agreement, contracted at a distance and are below EUR 200)?

For certain unregulated payment products, the rules of the DMD would apply. For example, certain types of gift cards that are expressly exempt from the scope of PSD2. Please note that the majority of payment products fall within scope of regulation and this example is narrow.

5d. Can you provide concrete examples when you applied the rules of the Directive for new products that appeared on the market before product-specific legislation was enacted (e.g. virtual currencies bought at a distance)?

This question appears to capture the central issue explored in the consultation. Whilst the DMD was once effective (before the introduction of product-specific directives) it is no longer effective and does not provide protection to consumers. That protection comes from sector-specific legislation (such as PSD2), which is tailored to the relevant regulated products (such as payment services).

6. Has the application and enforcement of the articles of the Directive progressively diminished due to the entry into application of subsequent product or horizontal legislation?

- Yes
- No
- Don't know

Please explain

Please see our response to question 5b. In summary, the application of the DMD has diminished with the exception of the 14-day right of withdrawal, which we consider is still effective in protecting consumers.

7. Would the repeal of the Directive lead to:

	Yes	No	Don't know
Regulatory gaps leading to an unlevel playing field (e.g. undue competitive advantage for financial providers in Member States that would provide a less protective framework)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lower consumer protection in those areas which are not as yet covered by product specific or horizontal legislation (e.g. pre-contractual information for consumer loans below EUR 200)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased difficulties for cross-border trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A reduction of administrative burdens for Member States (e.g. reduction of costs for supervision of the obligations stemming from the Directive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A reduction of regulatory costs for financial service providers (e.g. less compliance costs related to pre-contractual information obligations stemming from the Directive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
None of the above since in practice the Directive scope of application has lost most of its relevance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain

We consider much of the DMD is no longer relevant. As previously stated, the information requirements are now contained in product-specific directives such as PSD2. Product-specific directives are more effective in providing consumer protection because such requirements are suited to the product in question. For example, PSD2 contains more detailed information related to the specific elements of payment services, such as the unique identifier that executes the payment order, or the form of and procedure for giving consent to initiate a payment order.

The DMD provisions legislating for unsolicited services and unsolicited communications (articles 9 and 10 respectively), have been superseded by the GDPR, the Unfair Commercial Practices Directive and the E-Privacy Directive.

We consider the only DMD provision that has not been superseded and retains value is the 14-day right of withdrawal. Therefore, our position is that the DMD should be repealed and the 14-day right of withdrawal be inserted into the relevant sector-specific legislation.

8. The Directive bans unsolicited services and communications from suppliers when such services or communications lack the consumer's consent. However, over time, through the introduction of product specific and horizontal specific legislation, in particular Directive 2002/58/EC (e-Privacy), Directive 2005/29/EC (unfair business-to-consumer practices) and Regulation (EU) 2016/679 (General

Data Protection Regulation), the bans established by the Directive have lost their relevance. Should the revision of the Directive lead to the repeal of the current articles (Articles 9 & 10) concerning unsolicited supplies and unsolicited communications?

- Yes
- No
- Don't know

Please explain

Yes. We agree that articles 9 and 10 of the DMD have lost their relevance and that existing requirements (such as the GDPR, Unfair Commercial Practices Directive and the E-Privacy Directive) are more comprehensive and appropriate. The lawful processing and consent requirements, for example, under the GDPR are more extensive than the relevant bans in the DMD. For example, the DMD prohibits unsolicited services and communications, whereas the GDPR sets down comprehensive positive obligations with respect to the processing of personal data, thereby providing more protection for the consumer.

Contact

JUST-E1@ec.europa.eu