

# European Commission's consultation on Distance Marketing in Financial Services Directive review

## Position – Executive summary

July 2022

ESBG Transparency Register ID 8765978796-80

**The publication of the European Commission proposal amending Directive 2011/83/EU and repealing Directive 2002/65/EC, follows the public consultation carried out last year. The Distance Marketing in Financial Services Directive (DMFSD) has historically provided a legal basis for the distance selling of financial products and a minimum safety net for consumers, when there is no specific text (for example, when new products are introduced or for products outside the scope of a specific directive).**

ESBG supports the scenario chosen by the Commission for its proposal to retain the relevant and still valid elements of the DMFSD by integrating them into a broader directive (the Consumer Rights Directive 2011/83/EU which is not currently concerning financial products) and to make some adjustments. Thus, a specific chapter dedicated to “Financial services contracts concluded at a distance” has been added to this directive, making it possible to retain the specificities of the DMFSD.

A number of general articles of the Consumer Rights Directive would also apply to the distance selling of financial products, for example the penalties, but they are much heavier than those currently existing in the DMFSD. The reference to the general articles specifies (article 3 point 2) that if there is a specific act of the Union, (for example a specific directive), it is the provisions of this act which apply for this point, thus bringing precision and valuable legal certainty. We also ask the Commission why the Payment Services Directive 2 is not one of the mentioned specific Union Acts in recital 13. It has also been discussed whether there are conflicting pre-contractual information requirements in the Deposit Guarantee Directive that would solely apply for distance deposit account agreements in the future.

The Commission's proposal for a directive aimed at modifying the Consumer Rights Directive and repealing the DMFSD, seems to us to retain the advantages (in particular its technical neutrality) and principles of the DMFSD. ESBG members are more concerned with what happens if the scope of the Consumer Rights Directive is updated, which seems to happen frequently. It will be necessary to ensure that the legislative process makes it possible to maintain this balance while avoiding distorting the principle of the minimum safety net for new products, which is the great strength of the current DMFSD.

ESBG is also of the opinion that the review of the DMFSD should be carried out at the same time as the Consumer Credit Directive, to allow the texts to cover everything they need to and not leave room for gaps in the legislation.

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