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To:	General Secretariat of the Council
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC - Regulatory Scrutiny Board opinion : Impact assessment / Review of the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC) and amending Directive (2011/83/EU) on consumer rights

Delegations will find attached document SEC(2022) 203 final.

Encl.: SEC(2022) 203 final



EUROPEAN COMMISSION

SEC(2022) 203

21.12.2021

REGULATORY SCRUTINY BOARD OPINION

**Proposal for a Directive of the European Parliament and of the Council
amending Directive 2011/83/EU concerning financial services contracts
concluded at a distance and repealing Directive 2002/65/EC**

COM(2022) 204
SWD(2022) 141-142



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Review of the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC) and amending Directive (2011/83/EU) on consumer rights

Overall opinion: POSITIVE

(A) Policy context

The EU adopted the Distance Marketing of Financial Services Directive (DMFSD) in 2002. The Directive protects consumers when they sign a contract with a financial services provider remotely. The Directive sets rules on the information consumers must receive before concluding the contract and on the 14-day right of withdrawal. The Directive bans unsolicited communications from financial services providers. It also prohibits providers from supplying services that the consumer did not explicitly request.

The Directive was evaluated in 2020. This impact assessment aims to tackle the shortcomings identified by the evaluation.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not present the options nor their structure and content in sufficient detail. It does not explain why options without the safety net are not discarded.**
- (2) The report does not sufficiently assess impacts on business. It does not explain estimates and is not clear about limitations.**

(C) What to improve

- (1) The problem analysis should assess potential risks (e.g. data protection, discrimination) associated with the access by Big tech companies to personal data when providing financial services at a distance as this may affect both fair competition in**

This opinion concerns a draft impact assessment which may differ from the final version.

affected markets and consumer trust.

(2) The report should clarify the content and structure of the policy options. It should explain why options differ not only in the envisaged legal delivery instrument, but also contain different approaches to modernise and update the provisions of the current DFMSD. It should explain how these are linked to the different legal delivery instruments. The most ambitious modernisation option should be more specific on the precise measures it would include.

(3) The report should better explain why it does not discard options without the safety net upfront. The problem description demonstrates that the safety net ensures an important element of trust. Without it the options risk to be ineffective on the consumer protection objectives.

(4) The report should explore whether including DFMSD provisions in the Consumer Rights Directive may result in unintended consequences such as increased complexity of the Consumer Rights Directive.

(5) The report should strengthen the impact analysis. In particular, it should provide further explanation related to the cost to businesses, potential consumer detriment and the impact on SMEs.

(6) The report should provide more detail on the assumptions underpinning estimates (e.g. artificial 10% reduction of the consumer benefit in absence of the safety net), the data sources and the calculation methods for all key estimates, in particular the calculation of costs and benefits. It should present clearly the limitations and how they are addressed.

(7) The report should be more specific on the timeframe for the evaluation of the newly included provisions in the Consumer Rights Directive.

(8) The views of the various stakeholder groups – including dissenting views – should be reflected throughout the report.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal to review the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC) and amend Directive (2011/83/EU) on consumer rights
Reference number	PLAN/ 2020/7021
Submitted to RSB on	10 November 2021

Date of RSB meeting	8 December 2021
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ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>Overview of Benefits – Preferred Option</i>		
Description	Amount	Comments
<i>Direct benefits</i>		
Reduced recurrent costs for communication with consumers	EUR 78,1 million (M)	Figures drawn from VVA supporting study estimates Beneficiaries: financial services providers
Clarification of the application of DMFSD	EUR 42,1-48,1 M	Figures drawn from VVA supporting study estimates Beneficiaries: consumers
Improve timing provision key info	EUR 42,1-45,1 M	Figures drawn from VVA supporting study estimates Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Adapt information provision to channel	EUR 36,1-42,1 M	Figures drawn from VVA supporting study estimates Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Prohibition default options	EUR 42,1-48,1 M	Figures drawn from VVA supporting study estimates Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Cross-border trade: increase options for	EUR 42,1-48,1 M	Figures drawn from VVA supporting study estimates

consumers		Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Indirect benefits		
Not available		

Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Transposition/Adaptation	Direct costs	-		-	-	0,8 M	-
	Indirect costs	Not available					
Public Authorities monitoring and enforcement	Direct costs	-		-	-	-	5,1 M
	Indirect costs	Not available					
Familiarisation with new legislation	Direct costs	-		36,1 M	-	-	-
	Indirect costs	Not available					
Cost of updating/adapting IT systems	Direct costs	-		20,8 M	-	-	-
	Indirect costs	Not available					
Updating contractual documentation	Direct costs	-		24,1 M	-	-	-
	Indirect costs	Not available					
Staff training	Direct costs	-		1,6 M	-	-	-
	Indirect costs	Not available					
Complaint handling	Direct costs	-		-	13,7 M	-	-
	Indirect costs	Not available					