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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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

Delegations will find attached document SWD(2022) 142 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

**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 final} - {SEC(2022) 203 final} - {SWD(2022) 141 final}

Executive Summary Sheet
Impact assessment on the Review of Directive 2002/65/EC concerning the distance marketing of consumer financial services.
A. Need for action
What is the problem and why is it a problem at EU level?
The overarching problems are: 1) a lack of coherence and the decreased relevance of the Directive due to overlap with product-specific and horizontal legislation; 2) consumers using financial services by means of distance communication are not sufficiently protected and face detriment (limited consumer awareness of the key elements and costs of some financial services, suboptimal use of the right of withdrawal, new market practices exploiting patterns in consumer behaviour); and 3) the competitiveness of the single market for financial services sold by means of distance communication has not been fully achieved. The causes of these problems are: a regulatory framework that fails to ensure legal certainty; behavioural biases that are exploited by financial service providers; and barriers to the possible increase in the cross-border provision of financial products. The consequences of these problems for consumers are: detriment if they buy an unsatisfactory product; lack of sufficient trust as a basis for using a financial service, both in the consumer's home EU country and/or cross-border; and a resultant loss of welfare. For businesses the consequences are: an uneven playing field; extra compliance costs and a loss of welfare due to the lack of realisation of the single market's potential. If no action were taken, this state of affairs would continue to be the case.
What should be achieved?
The general objectives of the Directive's review are 1) to streamline the regulatory framework, ensuring greater clarity for all stakeholders and a high level of consumer protection; 2) to reduce detriment and ensure a high and consistent level of protection for consumers purchasing financial services at a distance; and 3) to facilitate the cross-border provision of financial services and the competitiveness of the single market. This is in line with the Directive's original objectives.
What is the value added of action at EU level (subsidiarity)?
The revision would lead to a clearer legislative framework that ensures legal certainty, whilst safeguarding the 'safety net' feature. Having horizontal consumer rights covering current and future financial services that appear on the market is something that can only be achieved at EU level.
B. Solutions
What are the various options for achieving the objectives? Is there a preferred option or not? If not, why?
The options assessed are: Option 0: no policy change scenario; Option 1: repeal of the Directive and non-regulatory measures; Option 2: comprehensive revision; Option 3a: relevant provisions introduced into horizontal legislation; and Option 3b: relevant provisions introduced in product-specific legislation. Based on the impact assessment, the preferred option would be Option 3a: repeal, the modernisation of relevant rights and injected into horizontal legislation, namely Directive 2011/83/EU on consumer rights (Consumer Rights Directive).
What are different stakeholders' views? Who supports which option?

Consumer organisations tend to favour a comprehensive revision of the Directive (Option 2), but they could accept repeal and the insertion of the Directive's relevant provisions into horizontal legislation (Option 3a). Financial service providers and business associations prefer the baseline scenario or Option 3b (putting the consumer rights into product-specific legislation). Public authorities believe the best option is to incorporate parts of the Directive into horizontal legislation (Option 3a).
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise the main ones)?
The preferred option is an effective way of achieving the specific objectives, as well as being efficient, in particular for consumers, and ensuring a high level of coherence. The option is expected to have a positive effect overall on consumer trust by introducing new rules on how and when information should be given to consumers and by limiting practices that exploit patterns of behaviour, such as the use of default options. It will also modernises the right of withdrawal by rendering the exercise of this right more straightforward. The option would have a positive effect on reducing consumer detriment (at least EUR 170-210 million).
What are the costs of the preferred option (if any, otherwise the main ones)?
Adopting the preferred option would result in additional one-off and recurring costs for businesses. This is because measures under this policy option would require service providers to familiarise themselves with the improved Consumer Rights Directive, adapt their IT systems, train staff, update their websites and update contracts. After the initial implementation of changes, no significant increase in recurrent costs is expected. This option would entail around EUR 19 million in costs for businesses.
What are the impacts on SMEs and competitiveness?
According to the analysis of the support study and the feedback from stakeholders, small and medium-sized enterprises (SMEs) should not be disproportionately affected in comparison to larger enterprises. The main types of impacts identified in this assessment would also apply proportionately to SMEs.
Will there be significant impacts on national budgets and administrations?
The preferred option would entail some one-off and recurrent costs for national authorities. Authorities would bear some transposition and implementation costs during the adoption phase, but these would not be too burdensome, since the new provisions are minimal. Additional monitoring and enforcement costs would be incurred due to the introduction of new rules, such as the prohibition of default options and the adaptation of presentational rules for different distribution channels.
Will there be other significant impacts?
The initiative is expected to simplify the legal framework by repealing the Directive, while maintaining the 'safety net' feature by injecting relevant articles of the Directive into existing consumer legislation. The new rules on the distance marketing of consumer financial services will also benefit from the application of certain rules of the current Consumer Rights Directive.
Proportionality?
The preferred option will not go beyond what is necessary in order to achieve the objectives. The initiative will cover only what EU countries cannot achieve on their own and only the areas where the administrative

burden and costs are commensurate with the specific and general objectives to be achieved.
D. Follow-up
When will the policy be reviewed?
The Commission will monitor the implementation of the policy chosen, if adopted, after its adoption. A list of monitoring indicators in the impact assessment will serve as a basis for the next evaluation.