Council of the European Union
General Secretariat

Interinstitutional files:
2022/0147 (COD)

Brussels, 29 July 2022

WK 10836/2022 INIT

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NOTE

From:	Presidency
To:	Delegations
Subject:	Directive on financial services contracts concluded at a distance - Presidency questionnaire to Member States

EU2022.CZ

Presidency questionnaire to Member States

29 July 2022

CONTEXT

Following the conclusions of the *Working Party on Consumer Protection and Information* held on 19th July the Presidency intends to facilitate Member States´ discussion about the proposal of the new rules for financial services provided at a distance (DMFS). The set of questions here below focuses on obtaining the **Member States´ view on the application of the new rules**, especially on its expected interaction with existing EU (i.e. the issue of the application of the lex specialis derogat legi generali principle) as well as national law (i.e. the impact of the full harmonisation regime proposed by the Proposal), and other topics which were raised during the last meeting.

Member States are kindly invited to underpin and illustrate their remarks and comments with **practical examples from their national financial markets**. Member States´ responses will be welcome by **26th August 2022**, so that the Presidency can process them before the next meeting of the Working Party (planned for 16th September).

Member States are also invited to **fill in the three-column table**, which has been to you by e-mail, with any additional comments as well as drafting suggestions.

QUESTIONNAIRE

Block A – Application of DMFS (scope, full harmonization, definitions)

Part I: The application and usefulness of the safety net

1. Does the DMFS cover well those financial products whose product type is not generally regulated at EU level (i.e. they have also not been specifically excluded)? What products do you see falling into that safety net?
2. Should DMFS´ safety net feature also cover those financial products, which are explicitly excluded from the scope of existing sectoral/product specific EU rules? Should the reason for the exclusion matter?*

* A product might be for example excluded because it would not be proportionate (e.g. because it does not bring significant risk for consumer, because the value of contract is so high that is on a near-professional level) or it might be excluded because the legislation wanted to make clear that a certain product is simply not in scope even if it might not even be a financial product at its core (e.g. hiring & leasing, loss adjusting)?

3. Should the proportionality principle be more taken into account in DMFS despite it being a safety net? For example, should there be some kind of upper/lower limit for its application (value/price threshold, duration of contract etc.)?

Part II: The application of the principle lex specialis derogat legi general

4. Do you find appropriate that the DMFS is to some extent applied also to products/services already covered by sectoral legislation (by adding new rules, e.g. 16d, 16e, sanctions)?
5. Does Art. 3(2) of the CRD (together with recitals and rules contained in Art. 16a/16b/16d) provide a sufficiently clear view on what rules are to be used?

Part III: The impact of full harmonisation on the national legal order

6. Does your MS have its own national product regulation for a product or service that would fall into DMFS rules? Have you analysed the compatibility of these rules? What consequences on your national legal framework could the DMFS rules bring?
7. In which articles would you like for the MS to have a possibility of maintaining stricter rules in their national legal order?

Part IV: Definitions

8. Do you know of any particular product or service as being unclear as to whether or not it falls under the term financial service? If yes, which? Would it be welcome to provide clarification in the recitals?

Block B – (New) Chapter IIIa Rules concerning financial services contracts concluded at a distance (Art. 16a to 16e)

9. Are the scale and quality of information requirements set by Art. 16a appropriate and proportionate to the specific (residual) nature of financial services intended to be covered by DMFS?
10. Should any of the disclosures laid down in Art. 16a (1) be clarified? How do you understand the words „where applicable“ used in letters (h), (n), (o) and (v)?
11. Do you consider layering as suggested in Art. 16a an appropriate way to ensure consumer awareness when using digital communication? Should the rules on layering be further specified? Should there be any red-lines for using layering?
12. Are you opposed to the introduction of the "withdrawal button" as suggested in Art. 16b? If yes, why?
13. Do you see Art. 16d and Art. 16e as proportionate, beneficial for consumers and clearly defining obligations imposed on financial service providers?

Block C – Additional articles to be considered for financial services from CRD/DMFSD

14. Do you consider the proposed list of „CRD articles“ to be applied to financial services appropriate? Should any CRD articles be removed or added from/to the new Art. 3(1b) CRD?
15. Are you missing any articles of the current DMFSD which you would like to add into the Proposal?