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NOTE

From:	Delegations
To:	Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
Subject:	Directive on financial services contracts concluded at a distance - Drafting suggestions and comments from AT, BE, DE, EE, FI, FR, GR, HR, IE, IT, PL, PT, SI, SK

Commission proposal (9053/22) 022/0147 (COD)	Drafting Suggestions	Comments
		PT (Comments): PT still has a scrutiny reservation. For this reason, our comments are preliminary.
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		FI (Comments): Our remarks at this stage are very preliminary and we will complete them as the negotiations proceed. For the effects of the proposal on the level of consumer protection and the coherence of national law, we refer to our written comments sent on 13 July and to our replies to the Presidency's enquiry from 29 July. DE (Comments): The German Government supports the objectives pursued by the proposal for a directive to modernise and adapt the right to distance selling of financial services available for the future and to further strengthen consumer protection and the internal market for financial services. As mentioned earlier, the ministries involved are working intensely and thoroughly on the analysis and assessment of the proposal. As a consequence, Germany has to uphold a general scrutiny reservation. Please consider the following comments as preliminary. Also, we focus on the regulation part. The recitals would be adapted in line with the amendments to the

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		articles. Furthermore, from our point of view, the provisions should be coordinated with the Consumer Credit Directive. In the area of financial services, divergent provisions should only exist where they are objectively justified. Therefore, if the Consumer Credit Directive will provide solutions for certain regulatory areas, these should then also be adopted for other financial services.
(Text with EEA relevance)		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		

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Having regard to the opinion of the European Central Bank ¹ ,		
Having regard to the opinion of the European Economic and Social Committee ² ,		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(1) Directive 2002/65/EC of the European Parliament and of the Council ³ lays down rules at Union level concerning the distance marketing of consumer financial services. At the same time Directive 2011/83/EU of the European Parliament and of the Council ⁴ lays down, amongst other, rules applicable to distance contracts for the sale of goods and provision of services concluded between a		

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Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

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Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC (OJ L 304, 22.11.2011, p. 64).

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trader and a consumer.		
(2) Article 169(1) and Article 169(2), point (a), of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that Union policies are to ensure a high level of consumer protection.	IE (Drafting): - use of “sub-paragraph” instead of “point”	
(3) Within the framework of the internal market, in order to safeguard freedom of choice, a high degree of consumer protection in the area of financial services contracts concluded at a distance is required in order to enhance consumer confidence in distance selling.		

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(4) Ensuring the same high level of consumer protection across the internal market is best achieved through full harmonisation. Full harmonisation is necessary in order to ensure that all consumers in the Union enjoy a high and equivalent level of protection of their interests and to create a well-functioning internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive, with respect to aspects covered by the Directive, unless otherwise provided in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation.	BE (Drafting): Member States may provide in their national law for a higher level of consumer protection than laid down in article(s) X [and x].	BE (Comments): As the scope of the directive is very large and horizontal (all financial services), this could imply that national legislation on specific financial services, and information duties on those financial services, should be prohibited or repealed. In this context more clarity could be given on the national competence regarding regulating certain selling practices (which normally concerns conformity with the unfair practices directive, what is allowed for financial services) and the possibility to maintain or instore specific national product regulation of certain financial products/services. We also refer to our comments in article 1.(b). Overall, we consider that this full harmonisation in the field of financial services would be likely to distort the objective of consumer protection, especially if it is interpreted too widely. This could lead to a lower level of protection for users of financial services in some Member States. We believe that this would not be appropriate. FR (Comments): As Article 4.2 of the current Directive was not kept in the Commission's proposal, full harmonisation would create a substantial issue, since France has adopted stricter measures in

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		order to tackle harmful unsolicited calling practices in the insurance sector. The question of harmonisation also raises the issue of which national framework will be applicable in the case of crossborder trade: the legal framework of the home country, where the trader of financial services is located and registered, or the destination country, where the consumer lives. If minimal harmonisation is eventually chosen, the Directive should make clear that the legal framework of the destination country prevails. IT (Comments): See the comment at art. 1(1)(a)(1b).
(5) Directive 2002/65/EC has been the subject of different reviews. Those reviews revealed that the progressive introduction of Union product-specific legislation has led to significant overlaps with Directive 2002/65/EC and that digitalisation exacerbated some aspects that are not fully addressed by that Directive.		IE (Comments): The Consumer Credit Directive 2008/48/EC complements the rules set out in Directive 2002/65/EC concerning the distance marketing of consumer financial services. In order to ensure legal certainty, it should be clarified that in case of conflict between the provisions, the provision of this Directive as <i>lex specialis</i> should apply.

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(6) Digitalisation has contributed to market developments that were not foreseen at the time of the adoption of Directive 2002/65/EC. In fact, the rapid technological developments since then have brought significant changes to the financial services market. Although many sector specific acts have been adopted on the Union level, financial services offered to consumers have evolved and diversified considerably. New products have appeared, in particular in the online environment, and their use continues to develop, often in a fast and unpredicted manner. In this regard, the horizontal application of Directive 2002/65/EC remains relevant. The application of Directive 2002/65/EC to consumer financial services not regulated by sector specific Union legislation has meant that, a set of harmonised rules apply to the benefit of consumers and traders. This ‘safety net’ feature, contributes to ensuring a high level of consumer protection while ensuring a level playing field among traders.	IE (Drafting): - “and their use continues to develop, often in a fast and unpredicted manner.” Suggest using “to increase” instead of “develop”. I think what is referred to here is the increase in numbers, “develop” is quite broad and doesn’t necessarily mean an increase in numbers.	FR (Comments): French authorities share the opinion that while the existence of a “safety net” contributes to harmonies rules to the benefit of consumers and traders, the Directive’s relevance and added value has decreased with the adoption of a number of EU product-specific legislative acts. As regards credits (consumer and mortgage) and investment products, most provisions of DMFSD seem irrelevant as they were all covered by sectorial legislations. However, as regards payment services, some articles, such as paragraph 3 of Article 3 of the current DMFSD regarding voice telephony communications, still stand and are still relevant to protect consumers. Moreover, as digital selling of financial services develops rapidly, the Directive provides a useful protection for potential new products, which may not exist yet and are not covered by any piece of national nor European regulation. France does support the objective of the revision of the Directive as explained by the European Commission: to modernize the 2002/65/EC Directive and adapt it to the new reality of the market of distance marketing of financial products, in order to ensure a high level of protection for consumers all over Europe and to foster the cross-border conclusion of financial services sold at a distance. A growing number

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		of unauthorized websites or social media are providing financial services at European scale, which create challenges related to consumers' financial and data protection.

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(7) In order to address the fact that the progressive introduction of Union sector specific legislation has led to significant overlaps of that legislation with Directive 2002/65/EC and that digitalisation exacerbated some aspects that are not fully addressed by the Directive, including how and when information should be provided to the consumer, it is necessary to revise the rules applicable to financial services contracts concluded between a consumer and a trader at a distance, while at the same time ensuring the application of the ‘safety net’ feature.		
(8) Directive 2011/83/EU, similarly to Directive 2002/65/EC, provides for a right to pre-contractual information and a right of withdrawal for certain consumer contracts concluded at a distance. This complementarity is, however, limited since Directive 2011/83/EU does not cover financial services contracts.		FR (Comments): French authorities support the revision option that was chosen by the European Commission and the legal technique used to adapt the rules of Directive 2002/65/EC: amending the current Consumer Right Directive, creating a dedicated chapter and repealing the current DMFSD address the main concerns identified in the Impact Assessment.

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(9) Extending the scope of Directive 2011/83/EU to cover financial services concluded at a distance should ensure the necessary complementarity. However, due to the particular nature of consumer financial services, in particular by reason of their complexity, not all the provisions of Directive 2011/83/EU should apply to consumer financial services contracts concluded at a distance. A dedicated chapter with rules applicable only to consumer financial services contracts concluded at a distance should ensure the necessary clarity and legal certainty.		IT (Comments): See the comment at art. 1(1)(a)(1b).

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(10) While not all the provisions of Directive 2011/83/EU should apply to financial services contracts concluded at a distance due to the specific nature of those services, a number of provisions of Directive 2011/83/EU, such as relevant definitions, rules on additional payments, on enforcement and penalties, should also apply to financial services contracts concluded at a distance. The application of those provisions ensures complementarity between the different types of contracts concluded at a distance. The extension of the application of the rules on penalties of Directive 2011/83/EU will ensure that effective, proportionate and dissuasive fines are imposed on traders responsible for widespread infringements or widespread infringements with a Union dimension.		IT (Comments): See the comment at art. 1(1)(a)(1b).
(11) A dedicated chapter in Directive 2011/83/EU should contain the still relevant and necessary rules of Directive 2002/65/EC, in particular concerning the right to pre-contractual information and the right to withdrawal, and rules ensuring online fairness when financial service contracts are concluded at a distance.	IE (Drafting): - should contain the rules of Directive 2002/65/EC that remain relevant and necessary - and rules ensuring the fair treatment of consumers when financial services contracts....	IE (Comments): The meaning of “online fairness” is unclear. It is the fair treatment of consumers when they purchase a financial service or product online that is relevant.

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(12) Since distance financial services contracts are most commonly concluded by electronic means, rules on ensuring online fairness when financial services are contracted at a distance should contribute to the achievement of the goals laid down in Article 114 TFEU and Article 38 of the Charter of the Fundamental Rights of the EU. The rule on adequate explanations should ensure added transparency and provide the consumer with the possibility to request human intervention when he or she interacts with the trader through online interfaces, such as a chatbox or similar tools. The trader should be prohibited to deploy measures in his or her online interface that could distort or impair the consumers' ability to make a free, autonomous and informed decision or choice.	IE (Drafting): (12) Since distance financial services contracts are most commonly concluded by electronic means, <u>rules on ensuring the fair treatment of consumers when financial services are contracted at a distance</u> should contribute to the achievement of the goals laid down in Article 114 TFEU and Article 38 of the Charter of Fundamental Rights of the EU (2012/C 326/02). The rule on adequate explanations <u>should ensure increased transparency</u> and provide the consumer with the possibility to request human intervention when he or she interacts with the trader through online interfaces, such as a chatbox or similar tools. The trader should be prohibited <u>from deploying measures in their</u> online interface that could distort or impair the consumers' ability to make a free, autonomous and informed decision or choice.	IE (Comments): Same as above re online fairness

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(13) Certain consumer financial services are governed by specific Union acts, which continue to apply to those financial services. In order to ensure legal certainty, it should be clarified that where another Union act governing specific financial services contains rules on pre-contractual information or on the exercise of the right of withdrawal, only the respective provisions of those other Union acts should apply to those specific consumer financial services unless provided otherwise in those acts. For instance, when Article 186 of Directive 2009/138/EC of the European Parliament and of the Council⁵ applies, the rules concerning the 'cancellation period' laid down in Directive 2009/138/EC apply and not the rules on the right of withdrawal laid down in this Directive and when Article 14(6) of Directive 2014/17/EU of the European Parliament and of the Council⁶ applies, the rules on the right of withdrawal under this Directive should not apply. Likewise, certain Union acts governing specific financial services⁷ contain extensive and developed rules	IE (Drafting): (13) Certain consumer financial services are governed by specific Union acts, which continue to apply to those financial services. In order to ensure legal certainty, it should be clarified that where another Union act governing specific financial services contains rules on pre-contractual information or on the exercise of the right of withdrawal, only the respective provisions of <u>this other Union act</u> should apply to those specific consumer financial services unless provided otherwise in those acts. For instance, when Article 186 of Directive 2009/138/EC of the European Parliament and of the Council⁹ applies, the rules concerning the 'cancellation period' laid down in Directive 2009/138/EC apply and not the rules on the right of withdrawal laid down in this Directive and when Article 14(6) of Directive 2014/17/EU of the European Parliament and of the Council¹⁰ applies, the rules on the right of withdrawal under this Directive should not apply. Likewise,	SK (Comments): It is essential to clearly regulate how certain consumer financial services will be applied, so that no problems arise when implementing the directive in practice. FR (Comments): Some aspects regarding the articulation between specific Union acts and the Commission proposal should be clarified: if a specific Union act contains rules regarding the right of withdrawal, should the professional set a “withdrawal button” when the contract is concluded online? Should the rules about layering (article 16a paragraph 4) be applicable to all contracts concluded online, even though the financial services are covered by a specific Union act? The answers to those questions remain unclear and should be specified in the recitals or the Directive itself. Moreover, these clarifications, if they are provided in the recitals, should be added to the recitals of the amended

⁵ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁶ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

⁷ Such as, Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19), Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214)

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designed to ensure that consumers are able to understand the essential characteristics of the proposed contract Furthermore, certain Union acts governing specific financial services, such as Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property⁸, already lay down rules on adequate explanations to be provided by the traders to the consumers with respect to the proposed contract. In order to ensure legal certainty, the rules on adequate explanations set out in this Directive should not apply to financial services falling under Union acts governing specific financial services that contain rules on the information to be provided to the consumer prior to the conclusion of the contract.	certain Union acts governing specific financial services¹¹ contain extensive and developed rules designed to ensure that consumers are able to understand the essential characteristics of the proposed contract. Furthermore, certain Union acts governing specific financial services, such as Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property¹², already lay down rules on adequate explanations to be provided by traders to consumers with respect to the proposed contract. In order to ensure legal certainty, the rules on adequate explanations set out in this Directive should not apply to financial services falling under Union acts governing specific financial services that contain rules on the information to be provided to the consumer prior to the conclusion of the contract.	CRD. IE (Comments): - to ensure consistency throughout between “consumer financial services” or just “financial services” This applies to the The Consumer Credit Directive 2008/48/EC – where the rules relating to pre-contractual information & the exercise of the right of withdrawal take precedence over the rules laid down in this directive. IT (Comments): See the comment at art. 1(1)(a)(1b).

⁹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

¹⁰ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

⁸ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34)

¹¹ Such as, Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19), Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214)

¹² Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34)

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(14) Consumer financial services contracts negotiated at a distance involve the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the trader and the consumer. In order to tackle the constant development of those means of communication principles should be defined that are valid even for those means which are not yet in widespread use or which are not yet known.	IE (Drafting): Consumer financial services contracts negotiated at a distance involve the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the trader and the consumer. In order to tackle the constant development of those means of communication, principles should be defined that are valid even for those means which are not yet in widespread use or which are not yet known.	

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(15) A single financial service contract involving successive operations or separate operations of the same nature performed over time may be subject to different legal treatment in different Member States, but it is important that the rules are applied in the same way in all the Member States. To that end, it is appropriate to provide that the provisions governing the financial services contracts concluded at a distance should apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts. For example, an "initial service agreement" may be considered to be the opening of a bank account, and "operations" may be considered to be the deposit or withdrawal of funds to or from the bank account. Adding new elements to an initial service agreement does not constitute an "operation" but an additional contract.	IE (Drafting): A single financial service contract involving successive operations or separate operations of the same nature performed over time may be subject to different legal treatment in different Member States, but it is important that the rules are applied in the same way in all the Member States. To that end, it is appropriate to provide that the provisions governing the financial services contracts concluded at a distance should apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts. For example, an "initial service agreement" may be considered to be the opening of a bank account, and "operations" may be considered to be the deposit or withdrawal of funds to or from the bank account. Adding new elements to an initial service agreement does not constitute an "operation" but an additional contract. HR (Drafting): (15) A single financial service contract involving successive operations or separate operations of the same nature performed over time may be subject to different legal treatment	HR (Comments): For the sake of clarity of the example, we suggest adding the last sentence from the Recital 17 of the Directive 2002/65/EC in full to Recital 15 of this Proposal.

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	in different Member States, but it is important that the rules are applied in the same way in all the Member States. To that end, it is appropriate to provide that the provisions governing the financial services contracts concluded at a distance should apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts. For example, an "initial service agreement" may be considered to be the opening of a bank account, and "operations" may be considered to be the deposit or withdrawal of funds to or from the bank account. Adding new elements to an initial service agreement, such as a possibility to use an electronic payment instrument together with one's existing bank account, does not constitute an "operation" but an additional contract.	

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(16) In order to delimit the scope of application of this Directive, the rules concerning consumer financial services concluded at a distance should not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.	IE (Drafting): In order to delimit the scope of application of this Directive, the rules concerning consumer financial services contracts concluded at a distance should not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.	
(17) The use of means of distance communications should not lead to an unwarranted restriction on the information provided to the consumer. In the interests of transparency, requirements should be laid down with regard to when the information should be provided to the consumer prior to the conclusion of the distance contract and how that information should reach the consumer. In order to be able to make their decisions in full knowledge of the facts, consumers should receive the information at least one day prior to the conclusion of the distance contract. Only in exceptional cases can the information be provided less than a day before the conclusion of the distance contract for financial service. In case the contract is concluded less than one day before, the trader, within the established timeframe, should be obliged to remind the consumer about the possibility to withdraw from the distance contract for financial service.	IE (Drafting): (17) The use of means of distance communications should not lead to an unwarranted restriction on the information provided to the consumer. In the interests of transparency, requirements should be laid down with regard to when the information should be provided to the consumer prior to the conclusion of the distance contract and how that information should reach the consumer. In order to be able to make their decisions in full knowledge of the facts, consumers should receive the information at least one day prior to the conclusion of the distance contract. Only in exceptional cases can the information be provided less than a day before the conclusion of the distance contract for a financial service. In case the contract is concluded less than one day before, the trader, within the established timeframe, <u>is obliged to remind the consumer</u>	IE (Comments): 'in good time' {prior to the conclusion of credit] is being used in The Consumer Credit Directive 2008/48/EC (previously drafted as 'at least one day') as it was deemed more flexible SI (Comments): Recital 17 should clarify which are exceptional cases when the precontractual information can be provided less than one day prior to the conclusion of the distance contract.

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	<u>about the possibility to withdraw from the financial services distance contract.</u>	
(18) The information requirements should be modernised and updated to include, for example, the email address of the trader and the information on the risk and reward related to certain consumer financial services. Consumers should also be clearly informed when the price presented to them is personalised on the basis of automated processing.		SK (Comments): There should be explained, what does it mean “automated processing”, resp. automated decision-making.
(19) When the consumer financial service concluded at a distance includes a risk-reward profile, it should contain such elements as a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the financial service and the possible maximum loss of capital, including information on whether all capital can be lost.	IE (Drafting): (19) When the consumer financial services contract concluded at a distance includes a risk-reward profile, it should contain such elements as a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the financial service and the maximum possible loss of capital, including information on whether all capital <u>could</u> be lost.	IE (Comments): - consistency re consumer financial services
(20) Certain financial services might pursue an environmental or social objective such as contributing to the fight against climate change or contributing to the reduction of over-	IE (Drafting): (20) Certain financial services might pursue an environmental or social objective such as <u>promoting sustainability objectives</u> or	IE (Comments): For consistency with language in other directives. PT

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indebtedness. In order to be able to make an informed decision, the consumer should also be informed about the particular environmental or social objectives targeted by the financial service.	contributing to the reduction of over-indebtedness. In order to be able to make an informed decision, the consumer should also be informed about the particular environmental or social objectives targeted by the financial service. PT (Drafting): (20) Certain financial services might pursue an environmental objective, as set in article 9 of the Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, or a social objective such as contributing to the reduction of over-indebtedness. (...)	(Comments): It is proposed that this DIRECTIVE, concerning financial services contracts concluded at a distance, also considers the framework to facilitate sustainable investment established in Regulation (EU) 2020/852.
(21) The information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens. In the case of mobile telephone screens, where the trader has customised the content and presentation of the online interface for such devices, the following information must be provided most prominently and in an upfront manner: information concerning the identity of the trader, the main characteristics of the consumer financial service, the total price to be paid by the consumer to the trader for the consumer financial service including all taxes paid via the trader or, when	IE (Drafting): (21) The information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens. In the case of mobile telephone screens, where the trader has customised the content and presentation of the online interface for such devices, the following information must be provided most prominently and in an upfront manner: information concerning the identity of the trader, the main characteristics of the financial service, the total price to be paid by the consumer to the trader	IE (Comments): The Consumer Credit Directive 2008/48/EC Pre contractual info should be provided through the Standard European Consumer Credit Information Form (SECCI) where key elements of the credit should be provided ‘in a prominent way’ on first page where consumers shall see all essential information at a glance , adapted to the technical constraints of certain media such as mobile telephone screens. HR (Comments):

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an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it, and the existence or absence of the right of withdrawal, including the conditions, time limit and procedures for exercising that right. The rest of the information could be provided via additional pages. However, all the information should be provided on a durable medium before the conclusion of the distance contract.	for the consumer financial service including all taxes paid via the trader or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it, and the existence or absence of the right of withdrawal, including the conditions, time limit and procedures for exercising that right. The rest of the information <u>may</u> be provided via additional pages. However, all the information <u>must</u> be provided on a durable medium before the conclusion of the distance contract.	We would propose further clarification of the term "<i>additional pages</i>" on which the rest of pre-contractual information could be provided. Does it refer to the general terms and conditions accessible via link on the bottom of the traders webshop? Therefore, we suggest adding examples to clarify the term "<i>additional pages</i>".

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(22) When providing pre-contractual information through electronic means, such information should be presented in a clear and comprehensible manner. In this regard, the information could be highlighted, framed and contextualised effectively within the display screen. The technique of layering has been tested and proved to be useful for certain financial services; its uses, namely the possibility to present detailed parts of the information through pop-ups or through links to accompanying layers, should be encouraged. A possible manner of providing pre-contractual information is through the ‘tables of contents’ approach using expandable headings. At the top level, consumers could find the main topics, each of which can be expanded by clicking on it, so that the consumers are directed to a more detailed presentation of the relevant information. In this way, the consumer has all the required information in one place, while retaining control over what to review and when. Consumers should have the possibility to download all the pre-contractual information document and to save it as a stand-alone document.	IE (Drafting): (22) When providing pre-contractual information through electronic means, such information should be presented in a clear and comprehensible manner. In this regard, the information could be highlighted, framed and contextualised effectively within the display screen. The technique of layering has been tested and proved to be useful for certain financial services; its uses, namely the possibility to present detailed parts of the information through pop-ups or through links to accompanying layers, <u>is encouraged</u>. One way of providing pre-contractual information is through the ‘tables of contents’ approach using expandable headings. At the top level, consumers can find the main topics, each of which can be expanded by clicking on it, so that consumers are directed to a more detailed presentation of the relevant information. In this way, the consumer has all the required information in one place, while retaining control over what to review and when. <u>It should be possible for consumers to download all the pre-contractual information document and to save it as a stand-alone document.</u>	IE (Comments): The Consumer Credit Directive 2008/48/EC Member States shall ensure that clear and general information on the credit granting process is provided to consumers in order to guide them, in particular those who take out a consumer credit for the first time, and especially on digital tools. The standard information should be shown upfront and saliently, in a clear way and in an engaging format. It should be clearly legible and adapted to take into account the technical constraints of certain media such as mobile telephone screens Consumers should see all essential information at a glance, even when they view it on the screen of a mobile telephone. DE (Comments): The presentation of information at different ‘layers’ or levels may, in principle, be a useful measure for the effective and user-friendly provision of information from the consumer’s point of view, but may also be detrimental to consumers. For example, there may be a risk that information may be “hidden” by means of long click paths or no longer perceived by the consumer. It is important that those risks are addressed here in order to raise awareness for

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		this issue. This especially includes a reference to Art. 16e.

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(23) Consumers should have a right of withdrawal without penalty and with no obligation to provide justification. When the right of withdrawal does not apply because the consumer has expressly requested the performance of a distance contract before the expiry of the withdrawal period, the trader should inform the consumer of this fact before the start of the performance of the contract.		IE (Comments): Consistent with right of withdrawal set out in the Consumer Credit Directive 2008/48/EC
(24) In order to ensure the effective exercise of the right of withdrawal, the procedure for the exercise of that right should not be more burdensome than the procedure for the conclusion of the distance contract.		
(25) For distance contracts concluded by electronic means, the trader should provide the consumer with the possibility to use a withdrawal button. In order for ensure the effective use of the withdrawal button, the trader should ensure that it is visible and, when the consumer uses the button, the trader should adequately document its use.	IE (Drafting): For distance contracts concluded by electronic means, the trader should provide the consumer with the possibility to use a withdrawal button. In order to ensure the effective use of the withdrawal button, the trader should ensure that it is visible and, when the consumer uses the button, the trader should adequately record its use.	

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(26) Consumers may need assistance in order to decide which financial service is the most appropriate for his or her needs and financial situation. Therefore, Member States should ensure that before the conclusion of a financial service contract at a distance, traders provide such assistance in relation to the financial services which they offer to the consumer, by providing adequate explanations about the relevant information, including the essential characteristics of the products proposed. The obligation of providing adequate explanations is particularly important when consumers intend to conclude a financial service contract at a distance and the trader provides explanations through online tools. In order to ensure that the consumer understands the effects that the contract may have on his or her economic situation, the consumer should always be able to obtain human intervention on behalf of the trader.	IE (Drafting): (26) Consumers may need assistance in order to decide which financial service is the most appropriate for <u>their</u> needs and financial situation. Therefore, Member States should ensure that before the conclusion of a financial service contract at a distance, <u>traders provide such assistance to the consumer in relation to the financial services they offer</u>, by providing adequate explanations about the relevant information, including the essential characteristics of the products <u>or services</u> proposed. The obligation <u>to provide</u> adequate explanations is particularly important when consumers intend to conclude a financial service contract at a distance and the trader provides explanations through online tools. In order to ensure that the consumer understands the effects that the contract may have on <u>their</u> economic situation, the consumer should always be able to obtain human intervention <u>from</u> the trader.	IE (Comments): - inclusive language/pronouns with “their”, not everyone identifies as a he or she and this is something that should be highlighted. Consistent with Consumer Credit Directive 2008/48/EC
(27) When concluding financial services contracts at a distance, traders should be prohibited to use the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers’ ability to make a free, autonomous and informed decision or choice.	IE (Drafting): (27) When concluding financial services contracts at a distance, traders should be prohibited <u>from using</u> the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers’ ability to make a free, autonomous	HR (Comments): It is necessary to provide examples in the respective recital in order to clarify what exactly constitutes “structure, design, function or manner of operation of traders’ online interface in a way that could distort or impair consumers’ ability to make a free, autonomous and informed

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	and informed decision or choice.	decision or choice”, to avoid differences in application among MS. DE (Comments): In this recital, examples for “dark patterns” should be added that especially cover specific cases regarding the conclusion of distant financial services contracts.
(28) Directive 2011/83/EU should therefore be amended accordingly.		
(29) Directive 2002/65/EC should therefore be repealed.		
(30) Since the objective of this Directive, namely, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.		

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(31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹³ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,		
HAVE ADOPTED THIS DIRECTIVE:		
Article 1		
Amendments to Directive 2011/83/EU		GR (Comments): We welcome the EU initiative for the Proposal amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC (DMFSD), as these two Directives both share a number of similarities, providing consumers with basic consumer rights, such as the right of withdrawal and the right to obtain pre-contractual information.

¹³ OJ C 369, 17.12.2011, p. 14.

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		Within this framework, we support in particular the provisions which enable consumers to exercise the right of withdrawal through a withdrawal button, and ensure that consumers who have had less than 1 day to digest the pre-contractual information are reminded about the right of withdrawal after the conclusion of the contract.
Directive 2011/83/EU is amended as follows:		
(1) Article 3 is amended as follows:		
(a) the following paragraph (1b) is inserted:		
'(1b) 'Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services.	AT (Drafting): '(1b) 'Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. SK (Drafting): '(1b) 'Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services.	AT (Comments): Article 24 (2)(3) and (4) should not be made applicable to distance contracts for financial services. Member states should be able to choose which sanctions they want to apply – as long as these sanctions are effective, proportionate and dissuasive. Member states should not be forced to introduce fines for any infringement of the new Chapter IIIa. The Austrian sanctions system is based on civil sanctions. As this is highly effective there is no justification to change that.

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	(4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. BE (Drafting): "supplier" means any natural or legal person, public or private, who, acting in his commercial or professional capacity, is the contractual provider of services subject to distance contracts; FR (Drafting): '(1b) 'Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Article 8(6), Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. FI (Drafting): '(1b) 'Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Article 8(6), Article 15, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. HR (Drafting):	Moreover we want to point out, that provisions like that were also included in the commission proposal on consumer credit but were deleted in the general approach (see document 10053/22). SK (Comments): In connection with the safety net function of the DMFS directive, a correct setting of the definition of financial services is necessary. It is essential to be clear about what falls under term of financial service and what not. Directive 2011/83/EU currently contains in Art. 2 point 12 definition of financial services. The current definition covers several products, but may cause legal uncertainty as it is not entirely clear what exactly falls under this definition. More than 20 years have passed since the introduction of this definition, and in our opinion, it does not take into account last, nor future technological development in the financial market. In our opinion, it may include, for example, cryptocurrencies, consumer credits up to €200 and over €75,000, P2P lending or various investment products. But it is not clear to us whether cryptocurrencies fall under the definition in their part related to the investing through cryptocurrencies, since, in our opinion, the purchase and sale of cryptocurrencies can also be provided by entities without an investment company license. P2P is also questionable, where it is a consumer-consumer

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	‘(1b) ‘Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Article 6a, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. DE (Drafting): ‘(1b) ‘Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Article 6a, Article 8 (2), (4) to (6), Article 11a, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 and 26 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services. SI (Drafting): ‘(1b) ‘Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Article 15, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25 to 27 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services.	loan relationship, while the platform itself is not a licensed entity, as well. It is also questionable whether this includes operational leasing or not, etc. We believe that DMFS’ safety net feature should also cover those financial products, which are explicitly excluded from the scope of existing sectoral/product specific EU, but it is firstly important to set the definition of financial services in right order. Due to the interest of legal certainty and clarity, it should then be deduced from this definition whether the DMFS” safety net also includes financial products that are explicitly excluded from the scope of existing EU sectoral/product rules. In the interests of the greatest possible consumer protection, we prefer that these products also fall under the safety net of the directive. As regards the limits for application of directive, we are of the opinion that, within the framework of the principle of proportionality, it is particularly important to ensure that the objectives of the draft directive are achieved. But currently, we cannot properly evaluate whether there is a need to introduce any upper/lower limits for its application. However, it is questionable whether the same rules should apply, e.g. for credits up to €100 and at the same for credits over €100,000. This should be subject to another discussion within MS.

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		BE (Comments): We suggest to keep the definition of ‘supplier’ as stated in article 2.(c) of the current Directive. The supplier is the person providing services at a distance. This Directive should however also apply when one of the marketing stages involves an intermediary. Having regard to the nature and degree of that involvement, the pertinent provisions of this Directive should apply to such an intermediary, irrespective of his or her legal status. The wording ‘trader’ does not seem to cover intermediaries. See also our comment on article 16a.1. Concerning the lex specialis provision (art. 3(2)), do we understand correctly that when a sectoral directive (e.g. UCITS or AIFM) is of minimum harmonisation, the whole sector concerned remains under the competence of national legislators? In other words, if national legislations have provided for stricter provisions in these (minimum) harmonised matters at European level, even regarding information requirements, right of withdrawal and/or online fairness, the national legislation can be maintained? We are of the opinion that the Consumer Rights Directive should not affect the minimum harmonisation nature of other directives (such as the UCITS or AIFM directive).

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		We note that article 4 of the Consumer Rights Directive (CRD) will apply to the new provisions inserted for the financial services contracts concluded at a distance with consumers. We would like to know in particular whether art. 4 of the CRD also covers any national laws outside harmonised domains imposing rules on information requirements, right of withdrawal or online fairness, but without specifically regulating the distance marketing of financial services, nor specifically the marketing of such services to consumers. For example, in the case of public offers of securities, a European Regulation requires the publication of a prospectus. Belgium has extended this information obligation to public offers of other types of investment instruments. This does not specifically concern public offers “at distance” (even though most offers are made remotely and without the physical presence of investors), nor public offers to consumers. It would not seem coherent to oblige Belgium to repeal these provisions when they concern the marketing of instruments other than securities to consumers and at a distance, while the obligation to publish a prospectus could continue to apply to the public offers of such instruments when the marketing is not at a distance and/or does not concern consumers. This would lead to a situation which would not be consistent with the important objective of

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		protection for users of financial services. Another example: Belgian legislation provides for a right of withdrawal for insurance contracts concluded at a distance in favour of the “policyholder” and the insurer. In some respects, this Belgian legislation on the right of withdrawal may appear stricter than the proposal of Directive (in particular as regards the starting point of the right of withdrawal) . The notion of the policyholder is broader than that of the consumer, as it can cover "professionals"/"non-consumers" and the insurer. The proposal of Directive provides for a right of withdrawal for the consumer only. Should these Belgian provisions be repealed for consumers because they contain provisions diverging from those laid down in this Directive, and this even though they are not specifically addressed to consumers? This would again lead to a situation which would not be consistent because stricter rules could remain for non-consumers (and not for consumers). Clarification of these issues seems to us to be essential in order to assess the impact that the level of harmonisation of the proposal of directive would have on national legislations. We are of the opinion that an approach where Member States would not be allowed to impose national rules (outside the domains harmonised by sectoral directives) on information requirements, right of withdrawal or online

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		fairness, but without specifically regulating the distance marketing of financial services, nor specifically the marketing of such services to consumers would not be appropriate. The proposed regime does not seem to be tailored to cover such a broad range of specific situations. FR (Comments): Where a distance contract for financial services is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium. IT (Comments): As multiple Italian national authorities reported us, it is not clear how to interpret the relationship between the future directive and other specific provisions of EU law. In these regards, we would like to have it confirmed that art. 3 par. 2 Directive 2011/83/EU (“CRD”) and the art. 16a par. 6, art. 16b par. 6 and 16d par. 4 should be read as stating that whenever a EU sectorial legal instrument regulates a specific financial service, this discipline shall prevail on the one under the present

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		proposal, regardless the existence of an actual “conflict” between the two. We would also like to be confirmed whether the principle of prevailing of <i>lex specialis</i> shall apply regardless the means the underlying contract has been concluded and it would be preferable to specify that, whenever a sectorial legislation exists, the DMFS does not apply, even in the case where it would complement the sectorial provisions, in order to respect the decisions taken explicitly or implicitly by the sectorial legislator. In this regard, recital 13 does not help to clarify the interpretation. • More in general, as also reported by the Italian authorities in the questionnaires submitted during the preparatory works for the impact assessment, the relevance of the Directive 2002/65/EC (“DMFS”) decreased due to the product specific legislation adopted since 2002. For these reasons, on that occasion, the majority of the Italian authorities indicated the repeal of Directive 2002/65/EC as the preferable option. Nonetheless, having regard to the maintaining of relevance of some provisions of DFMSD in some sector, with the exception of articles 9 and 10 (nowadays irrelevant), we consider questionable the choice of

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		inserting the new discipline in the body of Directive 2011/83/EU (“CRD”). • Furthermore, as recently pointed out on the occasion of the Impact assessment form, it is not clear why a mere revision of Directive 2002/65/EC could not simplify the existing regulatory framework. Indeed, including the new provisions in the body of Directive 2011/83/EU poses various problems for national legal systems, which could then be reflected on the level of consumer protection. Specifically, this inclusion risks leading to confusion on the competent authorities for the enforcement of the aforementioned provisions, since, by recalling some of the provisions of Directive 2011/83/EU, an intertwining of competences is created between generalist and sectorial authorities. Therefore, considering the problems it would create, it would be appropriate to reconsider this choice and, if not to completely repeal this discipline, at least keep it separate from Directive 2011/83/EU. • The intention to give continuity to the horizontal approach of the legislation is commendable, as to allow a "safety net" function of the legislation with respect to new services. However, even in the light

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		of what emerged in the first two meetings, the choice of the European Commission to include this legislation in the context of Directive 2011/83 / EU (CRD) does not fully satisfy the parameter of the necessity of the proportionality principle. Indeed, this choice could lead to critical issues and important adaptation costs for national legal systems. It follows that the choice to include the legislation in question in the context of Directive 2011/83 / EU (CRD) can hardly be configured as the "mildest means" for the intended objectives. • At the same time, some of the services mentioned by the Commission as examples of financial services falling in the scope of the DMFS acting as a “safety net” for unregulated products should not be considered as such. This is the case, in particular, for the activity of commercializing in diamonds, as well as in expensive wines, which in Italy are considered as commercial activities and, as such, they are regulated by the unfair commercial practices framework and they are not subject in any way to the DMFS. In order to avoid similar misunderstandings, it would be appropriate to delete the above-

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		mentioned references from the explanatory memorandum. - As to the products we see falling into the safety net, for example, we believe that they could include credit agreements under EUR 200 and other consumer credits excluded from the scope of the CCD. Given the fact that some crowdfunding services have been made subject to EU financial regulation, we also deem possible to include into the safety net the crowdfunding products currently excluded from the scope of the EU legislation. - Similar concerns regard the activity/operations in crypto assets, which, according to recent EBA¹⁴ and ECB¹⁵ statements, at this moment is not subject to any form of regulation and therefore cannot be considered covered by the DMFS.

¹⁴ See, for instance, “EU financial regulators warn consumers on the risks of crypto-assets”, march 2022, ESA 2022 15, ESMA, EBA, EIOPA. In particular, at p. 2, it is stated that: *“Absence of protection: the majority of crypto-assets and the selling of products or services in relation to crypto-assets are unregulated in the EU.2 In these cases you will not benefit from the rights and protections available to consumers for regulated financial services, such as complaints or recourse mechanisms.”*

¹⁵ See, for example, “Virtual Currency Schemes”, European Central Bank, Frankfurt am Main, 2012 and “A deep dive into crypto financial risks”, Alexandra Born and Josep M. Vendrell Simón, available at https://www.ecb.europa.eu/pub/financial-stability/macprudential-bulletin/html/ecb.mpbu202207_1~750842714e.en.html, where it is argued that: *“[a]ppropriate regulatory, supervisory and oversight frameworks need to be implemented urgently, before stablecoins become a risk to financial stability. Financial stability risks from stablecoins in the euro area are currently still limited. However, if growth trends continue at their current pace, this may change in the future. Existing stablecoins need to be brought into the regulatory perimeter with urgency. In the EU, the European Commission’s proposed Markets in Crypto-assets (MiCA) Regulation marks a significant milestone. It is a bespoke regime for the issuance and provision of services related to stablecoins and other crypto-assets and seeks to regulate the crypto-asset ecosystem in a holistic and comprehensive manner, for example by specifying that only e-money institutions and credit institutions are allowed to issue stablecoins and setting authorisation and prudential requirements for crypto-asset service providers. It should be implemented as a matter of urgency.”*

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		• In general, we would prefer “financial services” to be regulated in the DMFS only to the extent that they are already qualified as such by a national or an EU piece of legislation and we therefore suggest amending the definition of “financial services” accordingly. Otherwise, on the one hand, there would be a risk of undermining legal certainty. On the other hand, there would also be the risk of blur the boundaries of the area of supervision and responsibility of the sectoral national authorities, which could be held accountable for the failure to supervise services whose nature is uncertain ex ante. • Furthermore, we believe the extension of specific articles of the CRD to the financial services should be carefully evaluated. This is the case, for instance, of article 19¹⁶ on the Fees for the use of means of payment. This article prohibits professionals from charging consumers, in connection with the use of certain payment instruments, fees that exceed those incurred by the professional for the use of those instruments. In the field of

¹⁶ Article 19 “Fees for the use of means of payment” Directive 2011/83/UE (CRD): Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

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		payment services, a specific rule is set out by Article 62 of the PSD2¹⁷, regulating the charges applicable by the payee, which could overlap with Article 19 of the CRD, causing difficulties in transposition and enforcement. We therefore suggest to specify that Article 19 shall not apply to payment services covered by the PSD2. • Among the articles of the CRD that would be extended to financial services, Article 22¹⁸ on additional payments requires the express consent of the consumer “to any extra payment in addition to the remuneration agreed upon for the trader’s main contractual obligation”. In the context of banking

- ¹⁷ Article 62 “Charges applicable” Directive (EU) 2015/2366: “1. The payment service provider shall not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title, unless otherwise specified in Article 79(1), Article 80(5) and Article 88(4). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider’s actual costs.
2. Member States shall require that for payment transactions provided within the Union, where both the payer’s and the payee’s payment service providers are, or the sole payment service provider in the payment transaction is, located therein, the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider.
3. The payment service provider shall not prevent the payee from requesting from the payer a charge, offering him a reduction or otherwise steering him towards the use of a given payment instrument. Any charges applied shall not exceed the direct costs borne by the payee for the use of the specific payment instrument.
4. In any case, Member States shall ensure that the payee shall not request charges for the use of payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 applies.
5. Member States may prohibit or limit the right of the payee to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments”.
- ¹⁸ Article 22 “Additional payments” Directive 2011/83/UE (CRD): “Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader’s main contractual obligation. If the trader has not obtained the consumer’s express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment”.

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		services, where specific rules on the form and content of contracts are set out and impose the disclosure of all costs including those related to ancillary services, we do not understand what an “extra payment” would be exactly and how this rule could be applied in practice. • The we believe that the extension of art. 4 CRD (<i>Level of harmonisation</i>) to financial services contracts concluded at a distance should be reconsidered. The sector of financial services is very diverse and sectoral regulations often offer the possibility of more or less strict provisions. The extension of the application of art. 4 CRD to financial services therefore poses cascading problems for the revision of numerous national rules. In this respect, it should be borne in mind that one of the main objectives of the present proposal is to provide a “safety net” for unregulated financial services contracts concluded at a distance and not to redefine the system of governance of the financial sector, which should be a more gradual process. The approach of minimum harmonization, paired with an interpretation of the principle of <i>lex specialis</i> (Art. 3(2) of the CRD, together

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		with recitals and rules contained in Art. 16a/16b/16d) in the terms indicated in the previous comments, appears to be the only possibility to safeguard the level of protection of consumers obtained in the national legal orders. On the other hand, the problems with the level of harmonization would be of lesser importance if the reading of the principle of <i>lex specialis</i> indicated by Member States such as Italy was accepted, meaning that the principle of specialty operating “by subject matter” and not “by content”. • More in general, we express concern about the choice to extend some provisions of the CRD to financial services, as this choice will raise governance issues at the national level, where so far the supervisory authorities on financial services have never been in charge of the enforcement of this directive. The option of maintaining the DMFS as an independent and autonomous legal act dedicated to the financial sector would have likely avoided these problems. • We also have serious concerns about the extension to financial services of Art. 24 on sanctions. In fact, currently the infringements of the DMFS are

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		sanctioned by the public authorities exercising the supervision on the various financial sectors concerned by the Directive (banking, investments, insurance etc.), under the respective sanctioning regime which is different from one another and could be not compatible with the maximum harmonization provisions set out in Art. 24. We wonder whether the confluence of the DMFS into the CRD allows MS to maintain their current regime. If not, this would seriously impact on the governance and enforcement of the rules on distance selling of financial services and should be carefully reconsidered. • MS should be allowed to introduce more stringent national provisions, at least for those sectors which are not regulated by EU legislation and which, in the absence of a European harmonisation, have been regulated by MS, such is the case of some personal pension services. In this regard, we would like to point out that the sector of personal pension services is not yet harmonised at EU level. Only the pan-European Personal Pension Product (PEPP) has been recently regulated by the Regulation (EU) 2019/1238, but this product is only one of the possible personal pensions

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		admitted. Apart from PEPP, which are regulated at EU level, all the other personal pension are regulated only at national level. In Italy, for example, personal pensions are well regulated by the secondary legislation provided by COVIP, the Supervisory Authority, in accordance with the primary legislation of Legislative Decree 252/2005. The secondary legislation defines all the information that should be provided to potential members, irrespective that the contract is concluded in person or at a distance. The same legislation also defines the Template of the information that should be provided, in order to permit all potential members to make an easy and clear comparison among all the personal pensions that are on the market. Without the introduction, for this sector, of an exception to the principle of the full harmonization, we will have the absurd consequence that the traders would be obliged to offer a different set of information depending on whether the personal pension contracts are concluded at a distance (regulated by the Directive) or in person (regulated by national legislation). In addition, as regards Italy,

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		the Italian consumers will receive much more information when they conclude the contract in person instead of at a distance. That being said, it is clear that it would be problematic if the information were different in the case of contracts signed face to face or remotely. Therefore, in the absence of specific rules at European level, the content of the information should be the same, established at national level, for the services in question in the case of conclusion in presence or at a distance. Taking into account all the above considerations, it is quite important to permit to MS to introduce, at least for personal pension services which are not regulated at EU level, more stringent provision on prior information requirements, as it is now admitted, for all financial services, by Art. 4(2) of the Directive 2002/65/EC, which provides that <i>“Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Community law.”</i> • With regard to the banking sector, in Italy we already have a general legislative framework acting as a safety net for any kind of banking products,

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		which to some extent overlaps with the DMFS rules, particularly in the field of pre-contractual information. The national law transposing the DMFS currently complements, rather than replacing, the domestic “safety net” provisions. For example, according to the national rules, the pre-contractual information for all credit agreements must include the Annual Percentage Rate of Charge, even where the credit agreement is out of the scope of the CCD/MCD. Furthermore, the domestic framework provides for additional pre-contractual documents or obligations: for instance, the customer has the right to be provided, upon request, with a copy of the draft credit agreement before signing the contract, so as to be able to examine all of the contractual terms and conditions (and not only those outlined in the pre-contractual document). Besides, creditors shall also publish on their websites – and recall in the pre-contractual documents – the “Guides” of the Bank of Italy providing in simple words general information on the purpose and the main features of the more widespread credit products, on the rights granted to consumers in relation to them, and on the access to the Italian

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		Banking and Financial Ombudsman¹⁹. The approach envisioned in the proposed DMFS revision would mean that the national safety net rules would probably have to be disapplied entirely where they overlap with the revised Directive, i.e. to the extent that they refer to the pre-contractual information for financial services provided to consumers at a distance. Nevertheless, the same national general rules could continue to apply to non-consumer customers and to agreements concluded in person. PT (Comments): PT has noted that, while the second paragraph of Article 3, (1b), of the Proposal has an exact correspondence with Article 1, (2), first paragraph, of the DMFSD, the second paragraph of the latter was removed: <i>'In case there is no initial service agreement but the successive operations or the separate operations of the same nature performed over time are performed between the same contractual parties, Articles 3 and 4 apply only when the first operation is performed. Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in the new series of operations and, accordingly,</i>

¹⁹ See Testo unico bancario (d.lgs. 385/1993), Titolo VI, Capo I; delibera CICR 4 marzo 2003, sezione II; Provvedimento della Banca d'Italia 29 luglio 2009, Sezione II, par. 2 (Guide pratiche), par. 6 (consegna copia del contratto), par. 8.2 (TAEG).

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		<i>Articles 3 and 4 shall apply.'</i> For this reason, PT would request for the COM to clarify the rationale behind the deletion of this provision. FI (Comments): Finland suggests amending the list with the following Articles of the current CRD: - Article 8 (6). From a consumer protection viewpoint, it is important to allow Member States the option to require a confirmation in accordance with 8 (6). - Article 15: Preliminarily, we consider it logical to treat ancillary contracts in the same way regardless of their subject matter and apply Article 15 to distance contracts on financial services as well. In addition, it would be more practical and efficient to apply Article 21 to financial services contracts regardless of whether they are provided at a distance or not, e.g. in the following manner: Art 3(3)(d) amended: 'for financial services, except when otherwise provided in this Directive' Art. 17, a new subparagraph amended: Article 21 shall apply to financial services. EE

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		(Comments): We are still analysing which provisions of CRD should apply to distance contracts for financial services. For example, we wonder why it has been considered unnecessary to apply the rule of pre-contractual information becoming part of the contract (CRD art. 6(5)) or additional information obligations to online marketplaces (CRD art. 6a) as they are provided for other distance contracts. It is also unclear why the CRD art. 27 isn't applied to distance contracts for financial services. Art. 27 exempts the consumer from the obligation to pay for the provision of goods or services not ordered in the case of inertia selling, which is prohibited by the Unfair Commercial Practices Directive. Such a provision is also present in the current DMFSD (art. 9), but the proposal doesn't include this article to CRD. It is questionable why a provision that significantly affects the level of consumer protection has been omitted from the provisions applicable to distance contracts for financial services. Although the prohibition of inertia selling is established in the Unfair Commercial Practices Directive, the latter regulates public law aspects, not contract law aspects. We are also still considering, whether the

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		extension of the penalties provision (art 24) should be extended, at least in full, also to financial services, as our view is that Member States should be left enough flexibility to regulate sanctions in a way that is most suitable for their legal systems. The types of sanctions used should not be prescribed outside the scope of article 83 of the TFEU. Keeping this in mind, it would be preferable that the referral to specific types of sanctions or types of proceedings would be avoided. Also, there should be enough flexibility to take into account the gravity of the breach and vary the sanctions accordingly (to apply the <i>ultima ratio</i> principle). Additionally, since art. 2 of CRD would apply to distance contracts of financial services, we find it necessary to clarify the definition of financial services. Financial services are defined very differently in Member States, and the blurring of the definition at the EU level might work against the uniform market rules. We would also like to clarify whether savings and loan associations fall into the scope of financial services. HR (Comments): Although there are not many examples of financial services being offered on online

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		marketplaces, in such cases consumer needs to be informed of the counterparty (whether the service provider is a trader or not) and whether the consumer rights stemming from Union consumer protection law apply to the contract. DE (Comments): • In the impact assessment we do not find a reason why online marketplaces which offer financial products should be excluded from the obligations laid down in Art. 6a. As the CRD is a horizontal directive which in general provides for the same rules for its entire field of application, Art. 6a should also be referred to here. • Art. 8 contains special provisions on distance contracts, which are not found in this form in Art. 16a par. 2 to 4. There should, therefore, be also a reference to certain paragraphs of Art. 8. In particular, we do not see a reason why there should be a withdrawal button for financial services where there is no “order button”; Art. 8 par. 2 has to be, therefore, referred to. • In the negotiations of the Green Transition Directive, DEU has proposed the introduction of a withdrawal button

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		for goods and services in a new Art. 11a. This new paragraph should also be applicable to financial services. As to Art. 24 (3) and (4), we are aware that a similar provision has been introduced into Directive 93/13/EEC, Directive 2005/29/EC and Directive 2011/83/EU through Directive (EU) 2019/2161 (Omnibus Directive). However, difficulties have arisen in some aspects in the transposition of these rules into national law. It raises considerable difficulties in terms of the rule of law to frame such a penalty regime in a sufficiently certain language and in accordance with the constitutionally guaranteed principle of legality which does not permit a mere reference to other legislations but requires a clear definition of the respective infringements in the national provision itself in order to sanction the infringements of foreign law under German law. Moreover and among other concerns regarding the principle of proportionality, in German national law fines cannot be introduced in fields of law that have a well balanced and effective civil sanctioning system. The experiences of the Member States with

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		the transposition of the Omnibus Directive should be taken into account. In the general approach of the CCD the proposed rules on the sanctioning within the framework of joint CPC actions (Article 44 (2)) has been deleted. This should also be reflected here. Finally, in its national law, DEU has also established rules on financial services concluded outside of business premises. It should be clarified, that these national rules are not blocked by the new Consumer Rights Directive. SI (Comments): Generally comment: In case of full harmonization: Consumer Credit Directive: In SI loans below EUR 200 and above EUR 75 000 are already included in the scope of the Consumer Credit Act, that transposed CCD provisions. The full harmonization of the DMFS proposal would weaken consumer protection in case that the new proposal of CCD would not include the mentioned loans into the scope. Drafting: Added Art 15 The Art 15 of CRD (effects of the right of

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		withdrawal on ancillary contracts) is not among the Articles which would apply to financial service contracts concluded at a distance. Preliminarily, we consider it logical to treat ancillary contracts in the same way regardless of their subject matter and apply Article 15 to distance contracts on financial services as well. The Article 6 (7) (second subparagraph) of the existing DMFSD is not specifically transferred to the new chapter of the CRD Directive (2011/83/EU) and the Article 15 of the CRD determines the effects of the exercise of the right of withdrawal on ancillary contracts. According to the Article 1 (1) of the DMFS proposal, which lists the articles of the CRD that would apply also to the financial services contracts, concluded at a distance, the Art 15 of CRD is not included in the mentioned list of articles and thus the Article 15 would not apply to the financial services contracts, concluded at a distance. On the other hand, the art 1 (2) of the DMFS proposal changes the point (d) of the Art 3 of CRD as follows (this Directive shall not apply to contracts): '(d) for financial services, not covered by Article 3(1b).'

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		In our understanding the new changes to the Art 3(d) of the CRD would mean, that the directive would apply to the financial services, covered by Article 3(1b), although the Art 1(1) of the DMFS proposal includes only specific Articles of CRD, that would apply to the financial services contracts, concluded at a distance. In view of all the above, we are interested in whether the non-transfer of Article 6 (7) of the DMFSD in CRD would still represents a safety net for all financial services regarding the cancellation of the ancillary contracts, concluded at a distance, that would be attached to the main financial services contracts, concluded at a distance. Added Art 27 In impact assessment on the DMFS proposal states, that the issue of unsolicited services is sufficiently addressed by the provisions of the Unfair Commercial Practices Directive. The recital 60 of CRD states that the unsolicited supply of goods or provision of services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') (13) but no contractual remedy is provided therein, it is necessary to

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		introduce in this Directive the contractual remedy of exempting the consumer from the obligation to provide any consideration for such unsolicited supply or provision (Art 27 of CRD). Therefore SI suggests to add also Art 27 of CRD to the list of articles, that would apply to the distance contracts for financial services.
	PL (Drafting): Member States may adopt more stringent provisions concerning distance contracts for the supply of financial services to protect consumers.	PL (Comments): In our view Member States should be free to adopt more specific rules concernign types of products that are not subject to EU legislation. The role of DMFSD was primarily a “safety net” for products that are not subject to sectorial regulation (either on EU or domestic level) and that function should be sustained.
Where contracts referred to in the first subparagraph comprise an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions referred to in the first subparagraph shall apply only to the initial agreement.	DE (Drafting): Where contracts referred to in the first subparagraph comprise an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions referred to in the first subparagraph shall apply only to the initial agreement. Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in a new series of operations, the provisions referred to in the first subparagraph shall apply.	DE (Comments): We see no reason why the given exception in the directive 2002/65/EC should not be transferred in this proposal.

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(b) in paragraph 3, point (d) is replaced by the following:		
'(d) for financial services, not covered by Article 3(1b).'		
(2) The following Chapter is inserted:		
'CHAPTER IIIa		
RULES CONCERNING FINANCIAL SERVICES CONTRACTS CONCLUDED AT A DISTANCE		
Article 16a		
Information requirements for distance contracts for consumer financial services		AT (Comments): We are very concerned about the fact that (as confirmed by the Commission) this Article also applies to financial products which are explicitly excluded from existing sectoral/product specific EU rules. Due to the full harmonisation approach this would mean that member states are no longer allowed to extend the scope of their transposing legislation also to products which are excluded from the scope of the

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		respective EU rules. Instead, concerning precontractual information (and withdrawal) only rules of the DMFS may be applied for distance contracts. In Austria the law transposing the CCD is also applicable to credit agreements involving a total amount of credit more than EUR 75 000 (irrespective of whether the purpose of the credit is the renovation of a residential immovable property) although the CCD does not apply to these credits. It would be not at all understandable if in case of distance contracts different information obligations and different rules on withdrawal would apply to these credit agreements. In connection with the MCD similar problems arise, because in Austria the law transposing the MCD is also applicable to credit agreements which are secured by a mortgage on non-residential immovable property although the MCD does not apply to these credits. Therefore at least a provision similar to Article 4 of the current DMFSD seems to be crucial. In addition, it could be doubted if the DMFS must apply to financial services that are explicitly excluded from other directives (possibly under the condition that a member state has extended the rules of the directive to these products). Moreover it is questionable if the definition of financial services is sufficiently clear. Should e.g. deferred payments of an invoice free of

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		interest be considered as financial services and fall under the scope of the DMFS (respectively under the scope of Article 16a, 16b and 16d as far as deferred payments are excluded from the scope of the CCD)? IT (Comments): With reference to the communication of the information, we do not understand the reason why the provision of the DMFS according to which “The supplier shall fulfil his obligation under paragraph 1 [of Article 5 of the DMFS] immediately after the conclusion of the contract, if the contract has been concluded at the consumer's request using a means of distance communication which does not enable providing the contractual terms and conditions and the information in conformity with paragraph 1” has been removed, while the correspondent provision has been maintained in the CCD proposal (and General approach – art. 10, par. 7). An alignment of the two pieces of legislation would be appropriate. PT (Comments): In our view, this provision should follow a similar structure as the one presented by the Article 3 of the DMFSD, currently in place, namely by distinguishing the different information requirements by different categories (‘the supplier’, ‘the financial service’, ‘the

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		distance contract' and 'redress').
1. Before the consumer is bound by a distance contract, or any corresponding offer, the trader shall provide the consumer with the following information, in a clear and comprehensible manner:	BE (Drafting): 1. Before the consumer is bound by a distance contract, or any corresponding offer, the supplier shall provide the consumer with the following information, in a clear and comprehensible manner: FR (Drafting): Before the consumer is bound by a distance contract, or any corresponding offer, the trader shall provide the consumer with the following information, in a clear, and comprehensible manner, and in a language understood by the consumer:	BE (Comments): We suggest to keep the distinction 'supplier' and 'any professional other than the supplier'. With this additional notion, there is no discussion about who is contractually liable in case of breach of contract or wrong information. FR (Comments): As cross-border distribution of financial services may develop in the following years, the issue of language is key to ensure that the consumer truly understands the information given to him/her before concluding the contract.
(a) the identity and the main business of the trader;		IE (Comments): What is meant by business? Is it "financial services activity"?

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(b) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting;	GR (Drafting): (b) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting; Where applicable, the trader shall also provide the geographical address, identity and email address of the trader on whose behalf he is acting; BE (Drafting): (b) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such	GR (Comments): We agree with BE colleagues that it is not clear if an email address of the trader on whose behalf the trader is acting has to be provided. It is important that the consumer also has the email address of the actual contracting party. BE (Comments): Belgium suggests to make a distinction which information is to be provided by the trader and which information by the representative of the trader, by analogy with Directive 2002/65/EG (supplier and representative of the supplier) to enhance legal certainty. As in the financial sector many contracts are concluded through intermediaries/agents, it is essential that the supplier, who is the responsible contractual partner can be easily addressed. This precision in the existing directive has to be retaken. - It is not clear from article 16a.1(b), in fine of the proposal that an email address of the trader on whose behalf the trader is acting has to be provided. It is important that the consumer also has the email address of the actual contracting party. We suggest to add this to the provision. - Concerning the sentence "<i>all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently</i>" (own marking), Belgian legislation has a similar

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	correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and, identity and email address of the trader on whose behalf he is acting; <i>(c) when the consumer's dealings are with any professional other than the supplier, the identity of this professional, the capacity in which he is acting vis-à-vis the consumer, and the geographical address relevant for the customer's relations with this professional;</i> IE (Drafting): (b) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader	provision. We state that in practice there is discussion whether an online contact form is sufficient to meet the requirement of quick and efficient communication and which requirements the contact form should meet (e.g. possibility to add attachments, acknowledgement of receipt with transcript of the content,...) to be seen as sufficient. Can you please clarify this and elaborate on it in the recitals? In an increasing number of (online) services sectors, self-employed entrepreneurs and small business owners are carrying out their professional activities from their private homes. In those cases, the "geographical address at which the trader is established" corresponds to the trader's home address. In such cases, our national enforcement authorities are sometimes confronted with traders who refuse to provide their home address on their website (and/or their professional social media channels) because this would violate the right to privacy as safeguarded in Article 8 of the European Convention on Human Rights. What is the Commission's position on this matter? In such cases, are traders allowed to provide a PO box address instead of their actual address of establishment? What is the Commission's view on inserting an exception or special regime in the Directive for traders whose address of

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	quickly and communicate with <u>them</u> efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf <u>they are</u> acting;	establishment corresponds with their home address? IE (Comments): - inclusive language IT (Comments): We would suggest clarifying the meaning of the following provision: “where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means”.
(c) if different from the address provided in accordance with point (b), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;	IE (Drafting): (c) if different from the address provided in accordance with point (b), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf <u>they are</u> acting, where the consumer can address any complaints; HR (Drafting):	BE (Comments): See remark (b) about the geographical address and article 8 of the European Convention on Human Rights. IE (Comments): - inclusive language HR (Comments):

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	(c) if different from the address provided in accordance with point (b), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can also address any complaints;	Provision of point (c) could be interpreted in such a way that, in situations where there is a third party acting on behalf of the trader, complaints can be made exclusively to that third party, and not to the trader with whom the consumer has a contractual relationship. In order to ensure the clarity of the respective provision as well as to guarantee the right of the consumer to address complaints both to the trader or the third party acting on his behalf (who, indisputable, is also considered as a trader in the accordance with this directive), we propose the change in wording.
	PT (Drafting): (ca) where applicable, information on the possibility of submitting a complaint through digital channels;	PT (Comments): In addition to the requirement set by Article 16a, (1), (c), traders should be required to provide consumers with information on the possibility of submitting a complaint through digital channels, when this possibility is available.
(d) where the trader is registered in a trade or similar public register, the trade register in which the trader is entered and the registration number or an equivalent means of identification in that register;		
(e) where the trader's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;	DE (Drafting): (e) where the trader's activity is subject to	IE (Comments): “particulars” should be detailed here – is it the

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	an authorisation scheme, the name and address particulars of the relevant supervisory authority;	name? the address? Both? SECCI within CCD 2008/48/EC only requires the name of the Supervisory Authority DE (Comments): It should be specified which “particulars” are to be provided.
(f) a description of the main characteristics of the financial service;	IE (Drafting): a description of the main characteristics of the financial service <u>provided</u> ;	
(g) the total price to be paid by the consumer to the trader for the financial service, including all related fees, charges and expenses, and all taxes paid via the trader or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;		
(h) where applicable, that the price was personalised on the basis of automated decision-making;		SK (Comments): It is not clear to us how to proceed in the case of non-automated decision-making. It should be explained, what does automated decision-making means in recital 18. Also it is suitable to discuss if consumer has to know, that price is personalised on basis of automated decision-

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		making. In our opinion, in the provisions where it is explicitly stated that these are "where applicable" situations, it would be appropriate to give an explanation, at least in the recitals, which situations are involved. We are of the opinion, that in case there is information according to letter (h), (n), (o) and (v) in the disposal of the entity, it should provide it, and in the absence of such information, there is no obligation to provide it. Moreover, we would welcome if the terms "where applicable " and "where relevant" (letter (i)) would be explained, as this creates legal uncertainty.
(i) where relevant notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the trader's control and that historical performances are no indicators for future performances;	IE (Drafting): (i) where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the trader's control and that historical performances are <u>not</u> indicators for future performances; HR (Drafting):	HR (Comments): As it is necessary to inform consumers, that a certain financial service is connected to instruments that include special risks due to their specific characteristics, i.e. instruments whose price depend on fluctuations in financial markets outside the trader's control, and that the historical performances are no indicators for future performances, we believe that it is more appropriate to change the wording in question to "applicable".

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	(i) where relevant applicable notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the trader's control and that historical performances are no indicators for future performances;	
(j) notice of the possibility that other taxes and/or costs may exist that are not paid via the trader or imposed by him;	IE (Drafting): (j) notice of the possibility that other taxes and/or costs may exist that are not paid via the trader or imposed by <u>them</u> ;	
(k) any limitations of the period for which the information provided is valid;	IE (Drafting): (k) any limitations <u>on</u> the period for which the information provided is valid; HR (Drafting): (k) any limitations of the period for which the information provided in accordance to this paragraph is valid	HR (Comments): Change of wording in order to ensure clarity and legal certainty.
(l) the arrangements for payment and for performance;		
(m) any specific additional cost for the	IE	DE

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consumer of using the means of distance communication, if such additional cost is charged;	(Drafting): (m) any specific additional <u>costs</u> for the consumer <u>for</u> using the means of distance communication, if such additional <u>costs are</u> charged; DE (Drafting): (m) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged or known by the trader;	(Comments): The trader can only inform about costs, which he himself charges or which are at least known to him.
(n) where applicable, a brief description of the risk-reward profile;	HR (Drafting): (n) where applicable, a brief description of the risk-reward profile,	EE (Comments): We believe the necessity and suitability of this obligation needs further analysing. Although we understand the goals, we must analyse whether the provision of this information in the pre-contractual phase is necessary for the consumer and suitable for the given proposal, as well as reasonably definable for the trader. Additional explanations would be needed in this regard, and how voluminous or comprehensive the corresponding information should be. It should be taken into account that if the amount of information given to the consumer is increased, it may lead to an overabundance of information, as a result of which the consumer may not read the pre-contractual information or miss some of the important information. HR

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		(Comments): We propose additional clarification of the risk-reward profile in the appropriate recital or preferably a definition of the risk-reward profile. DE (Comments): As to (n) and (o), it should be clarified in the recitals that the wording “where applicable” means that the information obligation must only be fulfilled if the consumer has a legitimate interest in that information (see ECJ, C-179/21, para. 41). SI (Comments): SI like HR suggests that the point (n) further specifies the risk-reward profile.
(o) where applicable, information on any environmental or social objectives targeted by the financial service;	PT (Drafting): (o) where applicable, information on any environmental objectives, as set in the Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, or social objectives targeted by the financial service; HR (Drafting): (o) — where applicable, information on any environmental or social objectives targeted by the financial service;	AT (Comments): We would like to point out that “Regulation 2019/2088 on sustainability- related disclosures in the financial services sector” and “Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088” contain similar information obligations. It should be examined whether point o is consistent with that Regulations and whether a duplication of the information requirements is necessary. PT

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		(Comments): It is proposed that this DIRECTIVE, concerning financial services contracts concluded at a distance, also considers the framework to facilitate sustainable investment established in Regulation (EU) 2020/852. FI (Comments): How would the objectives mentioned here comply with Sustainable Finance Disclosure Regulations and Taxonomy or with the future CSDR? Is the purpose to cover services and products that are not already covered by the EU sustainable finance legislation already in force or soon to be enacted? How would consumers benefit from information not based on any commonly set principles against which to weigh the objectives and verify their fulfillment? Are there any concrete examples of products point (o) could refer to? EE (Comments): We believe the necessity and suitability of this obligation needs further analysing. Although we understand the goals, we must analyse whether the provision of this information in the pre-contractual phase is necessary for the consumer and suitable for the given proposal, as well as reasonably definable for the trader. Additional explanations would be needed in this regard, and how voluminous or comprehensive the

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		corresponding information should be. It should be taken into account that if the amount of information given to the consumer is increased, it may lead to an overabundance of information, as a result of which the consumer may not read the pre-contractual information or miss some of the important information. HR (Comments): Obligation to provide information on environmental or social objectives targeted by the financial service is already regulated by the SFDR Regulation and by the Taxonomy Regulation, so there is no need to duplicate information requirements.

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(p) the existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it including information on the amount which the consumer may be required to pay, as well as the consequences of non-exercise of that right;	AT (Drafting): (p) the existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it including information on the amount which the consumer may be required to pay, as well as the consequences of non-exercise of that right;	AT (Comments): In our opinion the last part of point b (“as well as the consequences of non-exercise of that right”) should be deleted. It is obvious what the consequences of not exercising the right of withdrawal are. SI (Comments): SI would like to know what are the consequences of non-exercise of that right besides the loss of the right of withdrawal within 14 days?
(q) the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;	AT (Drafting): (q) <u>where applicable</u> , the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;	AT (Comments): Since a minimum duration is not required for all financial services performed permanently or recurrently point q should begin with “where applicable” (see Article 6 para 1 point p CRD).
(r) information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed by the contract in such cases;		
(s) practical instructions for exercising the right of withdrawal indicating, <i>inter alia</i> , the		

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address or email address to which the notification of a withdrawal should be sent and for financial contracts concluded by electronic means, information about the existence and placement of the withdrawal button, referred to in Article 16d;		
(t) any contractual clause on law applicable to the distance contract and/or on competent court;		AT (Comments): We are not sure if point t is necessary because for most consumer contracts both the law applicable and the competent court are determined by EU regulations and cannot be modified by contract.
(u) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this Article are supplied, and furthermore in which language, or languages, the trader, with the agreement of the consumer, undertakes to communicate during the duration of this distance contract;	IE (Drafting): (u) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this Article are supplied, and furthermore in which language, or languages, the trader, with the agreement of the consumer, undertakes to communicate during the duration of <u>the</u> distance contract;	
(v) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.		IT (Comments): We find unclear the wording “where applicable” with reference to ADR (letter v), considering that the EU legislative framework already

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		provides for a general right to have recourse to out-of-court redress mechanisms.
	PT (Drafting): <i>'(va) the existence of guaranteed funds or other compensation arrangements, not covered by Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes.'</i>	
2. In the case of telephone communications, the identity of the trader and the commercial purpose of the call initiated by the trader shall be made explicitly clear at the beginning of any conversation with the consumer.	IE (Drafting): 2. In the case of telephone communications, the identity of the trader and the commercial purpose of the call initiated by the trader shall be made explicitly clear, <u>which includes but is not limited to delivering the information at a reasonable pace</u>, at the beginning of any conversation with the consumer. <u>The trader shall also notify the consumer if the call is being recorded.</u>	HR (Comments): We support the FR proposal with regards to the proposed amendments of the Article 16a Paragraph 2. Namely, the mentioned Paragraph should be redrafted in order to make clear that two agreements from the consumer are needed: one about continuing the conversation and the second one about getting only the information referred to in points a), f), g) and p). DE (Comments): A provision for online telecommunication seems to be missing here. We, therefore, propose to declare Art. 8 para. 4 applicable to financial services (see Art. 3 para. 1b).

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Where the consumer explicitly agrees to continue the telephone communications, by way of derogation from paragraph 1, only the information referred to in points (a), (f), (g), and (p) of that paragraph needs to be provided.	BE (Drafting): Where the consumer explicitly agrees to continue the telephone communications, by way of derogation from paragraph 1, only the information referred to in points (a), (f), (g), and (p) of that paragraph needs to be provided. <i>In case of voice telephony communications, subject to the explicit consent of the consumer only the information referred to in points (a), (f), (g), and (p) of paragraph 1, needs to be given.</i>	BE (Comments): This sentence suggests that the consumer implicitly agrees to receive less information by agreeing to continue the telephone communications. This seems a weakening of consumer protection in comparison with art. 3.3, (b) of directive 2002/65/EG that requires an explicit consent to receive less information in the case of voice telephony communications. In the new proposal this explicit consent is no longer necessary and the consumer will receive less information only because of the fact he continues the telephone communication. IE (Comments): In the previous Directive point (j) was also included – the notice of the possibility that other taxes may be imposed. Is there a reason this was removed? IT (Comments): • With regard to telephone communications, the provision "notice of the possibility that other taxes and / or costs may exist that are not paid via the trader or imposed by him" is no longer included among the necessary information, although it was provided for by the DMFS (see art. 3, paragraph 3, (b). The reason for this elimination

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		should be clarified. - Furthermore, we noticed another inconsistency between the DMFS and the current proposal. In particular, while art. 16a(2) provides that “Where the consumer explicitly agrees to continue the telephone communications, by way of derogation from paragraph 1, only the information referred to in points (a), (f), (g), and (p) of that paragraph needs to be provided...”, while art. 3(3)(b) DMFS states that “(b) subject to the explicit consent of the consumer only the following information needs to be given...”. In other words, the current DMFS would seem to subordinate the reduced information to an explicit consent of the consumer, while the proposal would anchor the reduction of the information to the consent to the continuation of telephone communications and not to the explicit consent to the reduction of information, thus reducing the protection of the consumer. - In addition to that, the current proposal no longer contains the provision pursuant to the current art. 5(1) DMFS according to which: “The supplier shall communicate to the consumer all the contractual terms and conditions ...”.

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		Similarly, with reference to art. 9 DMFS regarding unsolicited services²⁰, we would like to ask the Commission to clarify whether and to what extent this rule is still applicable to financial services at distance. According to the amendment provided for in Directive 2005/29 this provision was included in the DMFS. EE (Comments): The DMFSD article 3(3) point (b) first indent stipulates: „<i>the subject to the explicit consent of the consumer only the following information needs to be given: <u>the identity of the person in contact with the consumer and his link with the supplier</u></i>“. According to the correlation table annexed to the proposal, named provision is regulated by the new article 16a(2) second subparagraph, which in turn refers to art. 16a(1) letters (a), (f), (g) and (p). The 16a(1) point (a) stipulates: „<i>the identity and the main business of the <u>trader</u></i>“. Is the rule of revealing the identity of the person in contact with the consumer left out intentionally? If yes, we would like some explanations in this matter.

²⁰ In particular, art. 9 DMFS states: “Member States shall take measures to exempt the consumer from any obligation in the event of unsolicited supplies, the absence of a reply not constituting consent.”

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The trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1 and shall provide that information when fulfilling obligations under paragraph 3.	AT (Drafting): The trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1 and shall provide that information when fulfilling obligations under paragraph 3 <u>immediately after the conclusion of the contract.</u> FR (Drafting): The trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1. He shall ask to the consumer whether he agrees to receive only information referred to in points (a), (f), (g), and (p). In any case, the trader should provide information referred to in paragraph 1 when fulfilling obligations under paragraph 3. DE (Drafting): The trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1 and shall provide that information when fulfilling obligations under paragraph 3 and 4.	AT (Comments): The reference to paragraph 3 is not appropriate because paragraph 3 requires the trader to provide (all) the information referred to in paragraph 1 at least one day before the consumer is bound by any distance contact. This is contrary to the second subparagraph of paragraph 2 which limits the information requirements to certain points. The third subparagraph should instead be worded along the lines of Article 5(2) of the current DMFSD. FR (Comments): Paragraph 2 of Article 16a should be redrafted in order to make clear that two agreements from the consumer are needed: one about continuing the conversation and the second one about getting only the information referred to in points a), f), g) and p). DE (Comments): Paragraph 4 also regulates the provision of information.
3. The trader shall provide the information referred to in paragraph 1 at least one day before the consumer is bound by any distance contract.	AT (Drafting): The trader shall provide the information referred to in paragraph 1 at least one day <u>in good time</u>	AT (Comments): The timeframe should be set by “in good time” (see Article 3(1) of the current DMFSD), not by

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	before the consumer is bound by any distance contract. IT (Drafting): 3. The trader shall provide the information referred to in paragraph 1 at least one day <u>in due time</u> before the consumer is bound by any distance contract. FI (Drafting): The trader shall provide the information referred to in paragraph 1 in good time before the consumer is bound by any distance contract. HR (Drafting): The trader shall provide the information referred to in paragraph 1 at least one day in good time before the consumer is bound by any distance contract. DE (Drafting): The trader shall provide the information referred to in paragraph 1 at least one day in good time before the consumer is bound by any distance contract.	a fixed period of time (“one day”). “in good time” is more flexible and can be interpreted depending on the type of financial service which is important as so many different types of financial services are within the scope of this Directive. IE (Comments): One day might not be appropriate in all instances, see comment above IT (Comments): We appreciate the purpose of giving more certainty on the timeline for the provision of pre-contractual information. However, we are not convinced about the solution proposed, as already mentioned in the CCD negotiate. On the one hand, from a consumer protection perspective, we observe that in the context of distance services it is even more likely that the consumer wishes to conclude the agreement immediately, therefore the purpose of pre-contractual information to allow the consumer a comparison of offers and a careful choice would be substantially missed. Furthermore, from a market practice perspective, in many cases the provision of pre-contractual information one day in advance might not be suitable in the context of a fully digitalized process. For these reasons, during the negotiations on the CCD review, several concerns were raised about the

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		usefulness and effectiveness of this mechanism and at the end, in the General Approach, that provision was removed, reverting to the text of the current CCD. We suggest maintaining in this Directive a constant alignment with the ongoing negotiation on the CCD, in order to provide a homogenous level of consumer protection. PT (Comments): The proposed drafting of Article 16a, (3), is very similar to the initial text presented in the context of the Consumer Credit Directive (CCD) review. The Commission is certainly aware that the aforementioned proposal was subject to an intense scrutiny by Member States leading to its revision. The final compromise text reverted the proposed drafting to a text very similar to the one currently in place under the Consumer Credit Directive (Directive 2008/48/EC). The obligation imposed to the trader of providing the information at least one day before the consumer is bound by any distance contract <u>may hamper the speed and convenience of the commercialization of financial products and services through digital channels.</u> On the other hand, <u>there could also be situations where, due to the complexity of financial services and products, the duty to provide information to the consumer up to at</u>

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		<u>least one day before the consumer is bound by any distance contract is inadequate.</u> The time frame might simply be too short. Moreover, <u>PT considers that the derogation foreseen in the second paragraph of this provision maintains the problem already identified</u> (i.e., consumers often receive pre-contractual information at the same time they sign the contract). The disclosure of information to consumers, in a timely manner (i.e., giving the consumer enough time to assess the contract terms and conditions and their adequacy to his needs, interests and objectives), is an important aspect to strength the decision making process. Additionally, in our opinion, the right of withdrawal is not an equivalent or efficient mechanism to prevent consumers' detriment in this context. It is understandable that the current time frame foreseen in article 3, (1), of DMFSD ("in good time") might be, in some circumstances, difficult to interpret, due to its fluid nature. However, it is flexible enough to cover the diversity of types of financial services contracts (from simple to complex and should be interpreted accordingly). Therefore, <u>PT favours an alignment between the current proposal and the Council General Agreement of Article 10, (1), second paragraph of the CCD review:</u> <i>"Such pre-contractual information shall be</i>

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		<i>provided to the consumer in good time before he or she is bound by any credit agreement or offer.”</i> FI (Comments): Finland does not support the proposed deadline for the delivery of information to the consumer. In effect, the suggested model enables traders to replace the timely delivery of information with a reminder of withdrawal. This would not improve consumer protection, as the existence or absence of the right of withdrawal is already included in the pre-contractual information. It would also increase the administrative burden of traders without much benefit. A similar provision was included in the Commission’s proposal for CCD, but it was not accepted by the Council. We should follow the CCD General Approach in this respect. EE (Comments): Estonia generally supports the approach that the consumer must be provided with pre-contractual information before concluding the contract. However, it must be considered that the scope of application of the directive covers a wide range of financial services, therefore a greater flexibility may still be necessary to allow taking into account the circumstances of a specific contract. We believe the current solution in

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		DMFSD regarding the time for providing pre-contractual information would be more appropriate. It should be taken into account that a similar rule was provided in the new proposal for Consumer Credit, but the general approach of the Council remained with a more flexible solution. It was decided that the information must be provided within a reasonable time before the conclusion of the contract without a reminder of the right of withdrawal. HR (Comments): Consumer should receive pre-contractual information within the period which ensures sufficient time to study and understand the relevant information and consequences of concluding financial services contract. We propose to retain the obligation to provide pre-contractual information to the consumer within an appropriate period of time before the consumer commits to a distance contract or offer, as provided for in Directive 2002/65/EC. DE (Comments): We have doubts as to the effectiveness of para. (3). The strict one day-period foreseen in sub.para. (1) may, depending on the circumstances, make the conclusion of contracts for financial services inflexible. Furthermore, it

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		may be difficult for the trader to prove compliance with the one-day time limit in all cases. It might also prevent consumers from being able to receive insurance cover on short notice. Furthermore, the reminder of the right of withdrawal required by sub.para. (2) in case of non-compliance with the one day-period will not contribute to more transparency, but to more bureaucracy. Therefore, we believe that para. (3) should be aligned with the solution adopted by the Council in Article 10 para. (1) of its General Approach on the CCD: information to be provided “in good time” before the consumer is bound by the contract and deletion of the obligation to send a reminder. SI (Comments): According to the DMFSD proposal, the deadline for submitting the pre-contractual information is 1 day before the conclusion of the financial service contract (currently "in good time before"). Only in exceptional cases, the pre-contractual information can be provided less than a day before the conclusion of the distance contract. In this case a reminder must be provided. The proposal for DMFSD formulates this deadline in the same way as in the

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		Commission's CCD proposal, with the exception (recital 17) that the pre-contractual information can be provided less than a day before only in exceptional cases. Since consumer credits are also financial services SI would like to suggest that the deadline for submitting pre-contractual information and for submitting a reminder is harmonized. According to our opinion, there are no arguments to regulate the submission of pre-contractual information differently.
When the information referred to in paragraph 1 is provided less than one day before the consumer is bound by the distance contract, Member States shall require that the trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the distance contract and of the procedure to follow for withdrawing, in accordance with Article 16b. That reminder shall be provided to the consumer, at the latest, one day after the conclusion of the distance contract.	AT (Drafting): Should be deleted FR (Drafting): When the information referred to in paragraph 1 is provided less than one day before the consumer is bound by the distance contract, Member States shall require that the trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the distance contract and of the procedure to follow for withdrawing, in accordance with Article 16b. That reminder shall be provided to the consumer in good time before the consumer is bound by any distance contract or offer at the latest, one day after the conclusion of the distance contract.	AT (Comments): We doubt that the second subparagraph has any benefit for the consumer. In fact the “reminder”-obligation could be more confusing than useful. According to this text, the reminder could be “sent” (e.g. via E-Mail) immediately after the conclusion of the contract (perhaps at the same time as other information) which means that the “reminder” would not be particularly noticed by the consumer. Moreover we want to point out, that a provision like para 3 was also included in the commission proposal on consumer credit but was deleted in the general approach (see document 10053/22). GR (Comments): The reminder could be sent also and via e-mail immediately after the conclusion of the contract.

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	FI (Drafting): (to be deleted) DE (Drafting): When the information referred to in paragraph 1 is provided less than one day before the consumer is bound by the distance contract, Member States shall require that the trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the distance contract and of the procedure to follow for withdrawing, in accordance with Article 16b. That reminder shall be provided to the consumer, at the latest, one day after the conclusion of the distance contract.	FR (Comments): As Article 4.2 of the current Directive was not kept in the Commission's proposal, full harmonisation would create a substantial issue, since France has adopted stricter measures in order <u>to tackle harmful unsolicited calling practices in the insurance sector</u>. The proposal does not explicitly introduce the obligation for the consumer to conclude the contract only after a minimum period of reflection in the case of unsolicited calling by distributors of financial products, this implying that the sale could occur during the same phone call – whereas it is required under French law to wait for a minimum 24-hours period. This measure has been recently adopted after many abuses had been observed in the insurance sector and should not be made less stringent after the adoption of the amended CRD. Indeed, France has set a stringent framework stemming from four decisions taken by the French supervision authority since 2016 relating to breaches falling under the scope of DMFSD concerning insurance products, in particular for (i) default of provision of written precontractual information in good time before the conclusion of the contract and (ii) inaccurate and insufficient information communicated by phone. Therefore, the adoption of the proposal

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		as currently written would thus lead to a reduction of consumer protection, which is not acceptable for the French delegation. Consequently, we suggest to either opt for minimal harmonisation, which is in line with the idea that the new Directive will be a safety net at the European level, or add a paragraph similar to article 4.2, allowing Member States to introduce more stringent provisions in relation to activities considered as a potential threat for consumers. As an alternative to minimal harmonisation or to adding Article 4.2 of the current Directive we suggest adding the following paragraph. We also believe that the rule of 24 hours before / reminder of the right of withdrawal does not take into account the diversity of financial services which can be covered by the text. Consequently, we suggest to go back to “in good time”. EE (Comments): We are not convinced that the reminder of the right of withdrawal adds significant value for the consumer. It should be taken into account that the consumer has the right of withdrawal regardless of the reminder, and with the pre-contractual information, the consumer has

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		already been given information about his right of withdrawal. However, this might put an unnecessary burden for the traders. It should be taken into account that a similar rule was provided in the new proposal for Consumer Credit, but the general approach of the Council remained with a more flexible solution. It was decided that the information must be provided within a reasonable time before the conclusion of the contract without a reminder of the right of withdrawal. HR (Comments): It is necessary to further clarify the trader's obligation regarding “<i>reminder</i>”. What is the nature of the reminder and at which point the trader should send the reminder. For example, should the trader send the reminder together with the pre-contractual information referred in Paragraph 1 or within a certain period after that information has been sent to the consumer? Before or after the conclusion of the contract? In order to ensure clarity and uniform application, this provision needs to be amended with strict time-limits. DE (Comments): Cf. sub.para (1).
	FR (Drafting):	FR (Comments):

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	The trader must in any case provide the information referred to in paragraph 1 at least one day before the conclusion of the contract: i) when the right of withdrawal does not apply; or ii) when the product has been offered by unsolicited calling. Member States may require that the trader respects a reflection period during which he cannot contact the consumer again.	In case the Council decides not to go back to “in good time”, we suggest adding the following paragraph.
4. The information referred to in paragraph 1 shall be made available to the consumer on a durable medium and laid out in a way that is easy to read, using characters of readable size.	BE (Drafting): The information referred to in paragraph 1 shall be made available provided to the consumer on a durable medium and laid out in a way that is easy to read, using characters of readable size. IE (Drafting): 4. The information referred to in paragraph 1 shall be made available to the consumer on a durable medium and laid out in a way that is easy to read, using characters of readable size <u>and fonts that are easy to read.</u> HR (Drafting): The information referred to in paragraph 1 shall be made available to the consumer on a durable medium and laid out in a way that is easy to read, using characters of readable size. In addition, the consumer is entitled to change the	SK (Comments): We consider it appropriate to modify or explain the readability criteria. BE (Comments): How does ‘made available’ have to be understood in terms of distance communication? Is, for example, a reference to the website from which the information can be stored by the consumer sufficient? Also, do we understand correctly that ‘made available’ does not imply an action by the trader? Belgium believes that the wording 'provided' is more appropriate since this implies an action from the trader and not from the consumer. Can the Commission clarify why they opted for “made available” instead of “provided”? FI

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	means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided. DE (Drafting): 4. The information referred to in paragraph 1 shall be made available to the consumer on a durable medium and be legible and laid out in a way that is easy to read, using characters of readable size.	(Comments): The proposed Article does not include a provision according to which the information shall be provided in a way appropriate to the means of distance communication used. We would welcome an elaboration on why such a provision is not included in the Proposal (compare Article 3(2) of the current DMFSD). In Finland, the Web Accessibility Directive (Directive (EU) 2016/2102) was transposed with an Act covering, in addition to public sector bodies, a number of private sector actors, including financial services providers. The suggested full harmonization regime could prevent us from maintaining this regulation. A further national examination on the possible effects this might have on consumers with disabilities will be carried out. It is problematic to allow the consumer not to view all the information required, even if it often is unlikely that the consumer spends much time analysing the information. Any layering techniques should secure that the consumer actually sees all the required information before the contract is concluded. EE (Comments): In paragraph 4 is written: “<i>The information referred to in paragraph 1 shall be <u>made</u></i>

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		<i>available to the consumer...</i>” In paragraph 1 is written: “... <i>the trader shall provide the consumer...</i>” Should these provisions be conformed? HR (Comments): Prescribing obligation to make available information referred to in Paragraph 1 “<i>using characters of readable size</i>” could be a matter of different interpretation and result with different enforcement on Union level. It is sufficient to prescribe that trader should make these information available in a way that is easy to read which is also a matter of interpretation. Alternatively, if the text of the Paragraph 4 prescribes obligation to use characters of readable size, recitals should give examples of adequate size of characters for specific medium. In addition, we suggest keeping provision from Article 5 Paragraph 3 of the DMFSD. Such provision is not only favourable for the consumer, but also ensures easy change of the means of distance communication used in age of fast technology growth. DE (Comments): The requirement could be understood to include requirements for content comprehensibility. As

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		a result, difficulties of interpretation could arise. It should be clear that para. 4 – unlike para. 1 – does not refer to the comprehensibility of the text, but only to the visual legibility of the content. Therefore, we propose to stick to the wording of Art. 8 para. 1. It would be preferable - analogous to the CCD - to create a standard information sheet.
Except for the information referred to in paragraph 1, points (a), (f), (g), and (p), the trader shall be permitted to layer the information where it is provided by electronic means.	HR (Drafting): Except for the information referred to in paragraph 1, points (a), (f), (g), (n) and (p), the trader shall be permitted to layer the information where it is provided by electronic means. DE (Drafting): Except for the information referred to in paragraph 1, points (a), (f), (g), (h), and (p), the trader shall be permitted to layer the information where it is provided by electronic means.	SK (Comments): We have no specific reservations about layering, if the consumer is provided with all the information to be provided and the clarity of the text does not suffer. BE (Comments): It could be useful to provide a definition of layering. IT (Comments): Article 16a (4), on the way of providing pre-contractual information, introduces the concept of “layering” information, without further explanations. According to recital 22, this technique includes the use of pop-ups or links or the “table of contents approach” using expandable headings that allow the user to read further information details. In our view, as the recitals of the new Directive will not be included in the CRD review, it could be

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		advisable to define in the articles the technique of layering, in order to clarify in what it would consist. HR (Comments): The information regarding possible loss should not be layered as it is crucial to informed decision making. DE (Comments): DEU generally supports rules for “layered information”. But these rules are limited to financial services and hence regulate a very limited scope. Has the Commission considered to apply this provision also to goods and services? At least there should be given a clear definition for the method of layering in the definitions (not only in the recitals). . The letter h) should be added given the enormous importance of personalization for consumers and the impact of personalization on consumer decision-making. SI (Comments): SI agrees with DE, that providing information in layers could be misleading, because the information can be hidden. If online interface is used, it must be ensured that the multi-layered information is not

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		designed in such way that the consumer does not receive all the information. SI suggests also to include point (s) in the list of information, for which is not allowed to be layered.
In case the trader decides to layer the information, it shall be possible to print the information referred to in paragraph 1 as one single document.	IE (Drafting): In case the trader decides to layer the information, it <u>should</u> be possible to print the information referred to in paragraph 1 as one single document. HR (Drafting): In case the trader decides to layer the information, it shall be possible to print and view the information referred to in paragraph 1 as one single document.	IE (Comments): Consistency throughout re shall/should EE (Comments): In general we find the rules on layering clear. However, we are wondering whether layering might create an opportunity to still hide some relevant information from consumers several clicks away. Also we have yet to analyse if it is sufficient enough, or whether additional safeguards should be in place. Also we would like some explanations why is this stipulated only in the case of distance contracts for financial services. HR (Comments): Irrespective of the fact that the information is layered the possibility to see the whole set of the information, should not be limited to printing but should also include the possibility to view the information in a single document on the screen.

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Where colours are used to provide the information referred to in paragraph 1, they shall not diminish the comprehensibility of the information if the key information document is printed or photocopied in black and white.	IE (Drafting): Where colours are used to provide the information referred to in paragraph 1, they shall not diminish the comprehensibility of the information, <u>including when</u> the key information document is printed or photocopied in black and white. HR (Drafting): Where colours are used to provide the information referred to in paragraph 1, they shall not diminish the comprehensibility of the information if the key information document containing them is presented, printed or photocopied in black and white.	HR (Comments): “key information document” is a phrase used for specific financial product and should be avoided. Also, as the document containing information can be presented on the screen, there is a possibility it could be presented in black and white. Therefore, it is suggested to add “presented”.
The information referred to in paragraph 1 shall be made available upon request in an appropriate format to consumers with a visual impairment.	FR (Drafting): The information referred to in paragraph 1 shall be made available upon request in an appropriate format to consumers with a visual impairment. IE (Drafting): The information referred to in paragraph 1 shall be made available upon request in an appropriate format to <u>vulnerable consumers, including those with a visual impairment.</u>	AT (Comments): It should be examined whether the last subparagraph is consistent with Directive (EU) 2019/882 on the accessibility requirements for products and services. FR (Comments): Since a horizontal directive (2019/882, 17 april 2019) has been adopted recently, we suggest not to add any element on accessibility for people for disabilities in the DMFS.

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	DE (Drafting): The information referred to in paragraph 1 shall be made available upon request in an appropriate format to consumers with a visual impairment.	DE (Comments): Only the directive 2019/882 should apply to corresponding requirements in order to avoid contradictions.
5. As regards compliance with the information requirements laid down in this Article, the burden of proof shall be on the trader.		
6. Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, only the pre-contractual information requirements of that Union act shall apply to those specific financial services, unless provided otherwise in that act.	HR (Drafting): Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, only the pre-contractual information requirements of that Union act shall also apply to those specific financial services, unless provided otherwise in that act. DE (Drafting): Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, only the pre-contractual information requirements of that Union act shall apply to those specific financial	AT (Comments): It would be desirable to list in a recital all those specific financial services (and the respective Union acts) to which Article 16a does not apply – or at least most of them. In addition the remaining types of financial services to which Article 16a currently does apply should also be listed demonstratively. SK (Comments): In our opinion, it is necessary to specify in Art. 3(2) CRD, which cases are concerned, with specific reference to such relevant provisions. BE (Comments): What is meant by “only the pre-contractual information requirements of that Union act shall

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	services, unless provided otherwise in that act. This also applies if the Union act specifies only a certain part of the information requirements for certain products or gives the member states a margin of implementation with regard to the information requirements to be applied.	apply to those specific financial services”? We refer to our comment regarding the lex specialis mechanism in article 1 (b) above. Do we understand correctly that if these Union acts governing specific financial services have a minimal harmonisation level, also national (implementing) provisions that have provided for additional pre-contractual information requirements in these (minimum) harmonised matters, can be maintained? Further clarification seems important here in order to evaluate the impact of the maximal harmonisation level provided in article 4 of the Consumer Rights Directive (CRD), which would also apply to the new provisions on the distance marketing of financial services. It appears that this provision could lead to a lower level of protection for users of financial services in some Member States. We believe that this would not be appropriate. IT (Comments): See the comment at art. 1(1)(a)(1b). PT (Comments): As previously mentioned, PT is still assessing this matter; hence, our comments are still preliminary. PT deems essential to clarify the DMFS’ scope of application and how the rules currently being discussed will interact with the sectorial

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		legislation. In our view, the EU sectorial legislation should always prevail over the rules established by this proposal. For example, if the EU sectorial legislation excludes the possibility of the consumer to exercise a right of withdrawal, including those situations when a choice is given to MS to establish a right of withdrawal and / or a reflection period, the DMFS' safety net should not apply. Although the current wording of Articles 16a, (6), 16b, (6) and 16d, (4), as well as Articles 3,(2), and 25 of the CRD, are coherent with this interpretation, we are open to amend these provisions in order to better clarify what rules are to be used. FI (Comments): As per Art. 22 of the Insurance Distribution Directive (IDD), Member States may maintain or adopt stricter information requirements than the ones set in the IDD. As confirmed by the Commission at the meeting on 19 July, product-specific legislation takes precedence over Article 16 a even when such legislation allows flexibility not provided in Article 16a. We thus interpret that the flexibility clause in Art. 22 (2) of the IDD also applies to insurance contracts concluded at a distance. Pension products are not considered insurance –

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		based investment products according to Art. 2, paragraph 1, point 17 of the IDD. Nevertheless, the information requirements for insurance-based investment products nationally apply to pension products in Finland. For the sake of clarity and consumer protection, we are keen to maintain things the way they are. EE (Comments): In our view these rules need further clarification. Alongside with art. 3(2) of CRD, it is not entirely clear what rules are to be used in case of conflicts. It is not unequivocally clear which rules should apply, if the sector specific act has regulated only individual aspects, which could perhaps be based on the assumption that the otherwise valid general regulation of distance contracts would apply in other respects. Or if the sector specific legislation provides different options for achieving a similar goal, which do not exactly match what is in the proposal, for example, the possibility for the Member State to choose between the right of withdrawal or the reflection period. It is crucial that the question of which provisions apply is very clear to all market participants. HR (Comments): Obligation to provide consumer with pre-

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		contractual information in special Union laws include a specific scope of information, e.g. information about the distributor's legal form, his cooperation with insurance companies, about the product itself, etc. These obligation regulated by special Union acts <u>should not exclude obligation to provide pre-contractual information</u> under this Proposal, but rather to complement them. DE (Comments): The recitals should contain an indicative list of other EU-law provisions which fall under this exception (e.g. art. 185 of directive 2009/138, PSD2 and Art. 12 MiCA). Clear references to other legal acts should be provided in a footnote in the respective article for more legal certainty. It must be clear that para. 6 is not a “as far as”-rule. As soon as the other EU-law instrument contains any pre-contractual information obligation, Art. 16a is – as a whole - not applicable. This should be regulated as proposed in the Article and also in an amending recital with examples. See also comments on Article 16b.
	BE (Drafting):	BE (Comments):

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	<i>7. Where there are provisions in the Community legislation governing financial services which contain prior information requirements additional to those listed in paragraph 1, these requirements shall continue to apply.</i> FR (Drafting): 7. Pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Union Law. DE (Drafting): 7. Member States may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies.	In the context of full harmonisation, Belgium proposes that article 4 of directive 2002/65/EG (additional information requirements) would be inserted. DE (Comments): In German national law there are a number of further important pre-contractual information requirements, especially in the insurance sector. These requirements are often specifically tailored to the risks inherent to certain insurance contracts (e.g. the information that the premiums under a private health insurance contract can rise over the course of time; examples of premium developments in the past) and to the other important legal consequences under national law (e.g. the information that policyholders who decides to change to a private health insurance contract cannot usually return to the public healthcare system). These points cannot be addressed in this directive. This article can, therefore, only adhere to a minimum harmonization approach.
Article 16b		
Right of withdrawal from distance contracts for financial services		FR (Comments): France sees the right of withdrawal as central elements to enable consumers to understand complex products and to change their mind after having more information on the finance services offered to them. France also believes that the

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		exercise of the right of withdrawal should be easy and accessible, and sees the creation of a withdrawal button as a significant improvement.
1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from a contract without penalty and without giving any reason.	SK (Drafting): (1a) If the consumer has not received the contractual terms and conditions and information in accordance with Article 16a the withdrawal period shall in any case expire 12 months and 14 days after the conclusion of the credit agreement.	SK (Comments): We propose legislation similar to CCD2. IE (Comments): Consistent with Consumer Credit Directive 2008/48/EC SI (Comments): SI proposes that the conditions for the right of withdrawal from the contract within 14 days and the loss of this right to be harmonized with the CCD proposal (the loss of this right in 12 months and 14 days if not informed in accordance to the provisions).
The period for withdrawal referred to in the first subparagraph shall begin from one of the following days:		
(a) the day of the conclusion of the distance contract,		
(b) the day on which the consumer receives		DE (Comments):

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the contractual terms and conditions and the information in accordance with Article 16a, if that is later than the date in point (a) of this subparagraph.		Where an Union act contains information requirements, that take precedence according to Article 16a paragraph 6, but the act does not contain a right of withdrawal, it should be clarified in a recital that only the information requirements of the specific act need to be fulfilled for the withdrawal period to start. The recital should also provide examples and references to legal acts (e.g. PSD2) for legal certainty. For instance, the following text could be included as a recital in the directive: “Since reference is made to the provision of information under Article 16a as a whole for the beginning of the withdrawal period under Article 16b paragraph 1, second subparagraph, lit. (b), only the information requirements of the Union Act like PSD2 that shall apply according to Article 16a paragraph 6 need to be fulfilled for the withdrawal period to start.” Clear references to other legal acts should be provided in a footnote in the respective article for more legal certainty.
	DE (Drafting): (c) If the consumer has not received the contractual terms and conditions and information in accordance with Articles 16a, including the national requirements set up in accordance with Article 16a paragraph 7, the withdrawal period shall in any case expire 12	DE (Comments): The German government welcomes a high level of consumer protection. However, the start of the withdrawal period under the Directive is complicated: The withdrawal period does not start to run until the consumer is informed again of all the terms of the contract in the withdrawal

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	months and 14 days after the conclusion of the contract. This shall not apply if the consumer has not been informed about his right of withdrawal in accordance with Article 16a (1) (p).	information. This leads to legal uncertainty and many legal disputes and may result in perpetual rights of withdrawal. To prevent this, the German government would like to take the Council's General Approach on the CCD as a role-model in order to introduce a maximum withdrawal period. Again, it should be clarified in an accompanying recital, that Article 16a paragraph 6 is applicable. We also propose to add models for the withdrawal information required under Article 16a(1)(p) to the Directive. This will create legal certainty for both traders and consumers.
2. The right of withdrawal shall not apply to the following:		
(a) consumer financial services whose price depends on fluctuations in the financial market outside the traders control, which may occur during the withdrawal period, such as services related to:	IE (Drafting): (a) consumer financial services whose price depends on fluctuations in the financial market outside the <u>trader's</u> control, which may occur during the withdrawal period, such as services related to:	IE (Comments): - as above FI (Comments): The proposed Article 16 b (2)(a) is based on Art. 6 (2)(a) of the DMFSD, which in turn seems to repeat a list of products and services originally included in Section B of the Annex to the Council Directive 93/22/EEC on investment services in the securities field (ISD). The ISD was repealed by MiFID (2004/39/EC).

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		Article 6 (2) of the DMFSD does not refer to any prior piece of Union legislation. MiFID kept earlier instruments included in the ISD, but also introduced new ones whose price depends on fluctuations (Annex I, Section C, Financial Instruments). MiFID II (2014/65/EU) further introduced new instruments with price fluctuations. These new products are currently not excluded from the right of withdrawal as set out in Art 16b. Considering the target-market approach of MiFID rules, this could create uncertainties for products meant for a certain type of investors. We will elaborate on the problem later.
– foreign exchange;		
– money market instruments; transferable securities;	BE (Drafting): <i>money market instruments;</i>	BE (Comments): We suggest to make two separate lines here (cf. Directive 2002/65/EC).
	BE (Drafting): <i>transferable securities;</i>	
– units in collective investment undertakings;		
– financial-futures contracts, including equivalent cash-settled instruments;		

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– forward interest-rate agreements (FRAs);		
– interest-rate, currency and equity swaps;		
– options to acquire or dispose of any instruments referred to in this point including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;		
– crypto-assets as defined in <i>[Article 3(1)(2) of Commission Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/193 24.9.2020 COM(2020) 593 final]</i> .	FR (Drafting): crypto-assets as defined in [Article 3(1)(2) of Commission Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/193 24.9.2020 COM(2020) 593 final] .	FR (Comments): The interaction between the Market in Crypto Assets Regulation, recently negotiated by the Parliament and the Council (MiCA) and the DMFSD shall be carefully assessed: - The final MiCA compromise agreed between co-legislators, corresponding to the Commission proposal, requires that crypto-asset service should be considered ‘financial services’ in the DMFSD, in case the criteria of that Directive are met. Similarly, where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to the DMFSD as well, unless MiCA expressly states otherwise. (Recital 55 of the MiCA

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		regulation) - The reference in Article 16ter(2)(a) to the MiCA large definition of crypto-assets, that allows under DMFSD commission proposal for an exemption to providing consumers a right of withdrawal is too broad : such exemption shall not benefit neither financial instruments using crypto-assets, as expressly stated in recital 3 of the MiCA regulation, neither small issuers of general crypto-assets, as stated in recital 16 of the MiCA regulation. Besides, such DMFSD broad crypto-asset exemption to a consumer right of withdrawal shall not apply to offerors of general crypto-assets other than asset-reference tokens and e-money tokens as MiCA precisely adds such provision, under Article 12 and Recital 22.
(b) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;		IE (Comments): Does this need to exclude ancillary insurance intermediaries, or others, for consistency with Article 1, 3 of the IDD?
(c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.		

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3. The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in paragraph 1 if the communication concerning the exercise of the right of withdrawal is sent or the withdrawal button referred to in paragraph 5 is activated by the consumer before that period has expired.	DE (Drafting): The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in paragraph 1 if the communication concerning the exercise of the right of withdrawal is sent or the withdrawal button referred to in Article 11a paragraph 5 is activated by the consumer before that period has expired.	PT (Comments): The Proposal doesn't include a similar provision to the one established in Article 6 (6) of DMSFD. Moreover, the Proposal does not establish rules regarding the procedure that the consumer must follow in order to exercise his right of withdrawal. We can only find a reference to such exercise in paragraph 3 from Article 16b of the Proposal, that establishes that the consumer "<i>shall have exercised his right of withdrawal within the withdrawal period (...) if the communication concerning the exercise of the right of withdrawal is sent</i>". <u>This provision appears insufficient and should be further densified, in order to ensure legal certainty regarding the procedure to be followed by the consumer.</u> DE (Comments): Reg. drafting suggestion and comments see paragraph 5
4. This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.		
5. Member States shall ensure that, for distance contracts concluded by electronic	DE (Drafting):	GR (Comments):

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means, the trader provides a possibility to use a withdrawal button in order to facilitate the consumer's exercise of the right of withdrawal. Such button shall be clearly labelled with the words 'Withdraw from Contract' or a corresponding unambiguous formulation.	Art. 11a <i>(1) With respect to distance contracts where it is made possible for a consumer to conclude the contract via a website and the consumer assumes the obligation to pay a price, the trader shall additionally ensure that the consumer can withdraw from the contract on that same website by activating a button or via a similar function.</i> <i>(2) The button or similar function shall be labelled in an easily legible manner only with the words "withdraw from contracts here" or a corresponding unambiguous formulation. The button shall lead the consumer directly to a confirmation page which</i> <i>1. invites and enables the consumer to provide information which</i> <i>a) enables his unambiguous identification</i> <i>b) unambiguously identifies the contract to which the withdrawal applies</i> <i>c) enables the confirmation of withdrawal to be sent to him swiftly by electronic means</i> <i>and</i> <i>2. contains a confirmation button labelled in an easily legible manner only with the words "withdraw now" and which the consumer may</i>	To our point of view the right of withdrawal of the proposal is crucial in order for consumers to be able to change their mind after having more information on the finance services offered to them. Furthermore the exercise of the right of withdrawal should be easy and accessible. That's why we believe that the creation of a withdrawal button will have added value as a significant improvement. SK (Comments): In case of consumer credits, the withdrawal button will only apply to credits up to €200 and over €75,000 and it will not be necessary for consumers credits from €200-75,000, so it is questionable, whether such legislation is desirable and appropriate. More discussion within MS is needed. BE (Comments): Since the impact assessment was quite short on the aspect of the introduction of a withdrawal button, we still have some questions. What, for example, is the added value of a withdrawal button? Also, what is the consequence of the use of this button? Is the contract terminated instantly or is there a confirmation needed (from the consumer, or trader)? Will there still be other ways to exercise the right of withdrawal? PL

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	<i>activate in order to submit the declaration of withdrawal.</i> <i>(3) The buttons and confirmation page shall be permanently available and directly and easily accessible.</i> <i>(4) The consumer shall be able to store the declaration of withdrawal, submitted by activating the confirmation button or via a similar function, including the date and time of its submission, on a durable medium and in a way that makes it clear that the declaration of withdrawal was submitted by activating the confirmation button or via a similar function.</i> <i>(5) The trader shall immediately confirm to the consumer the content of the declaration of withdrawal, as well as the date and time of its receipt, on a durable medium.</i> <i>(6) Where the button or similar function and the confirmation page are not made available in accordance with paragraphs (1) to (3), a consumer may withdraw from the distance contract concluded by electronic means after the end of the withdrawal period in accordance with Article 9 (2) or Article 16b (1) respectively. The withdrawal period shall then expire [x days/months] after the end of the original withdrawal period in accordance</i>	(Comments): More explanations are needed regarding the withdrawal button and its functioning. IT (Comments): With reference to the Withdrawal Button foreseen in Article 16b (5), we appreciate the purpose of simplifying the exercise of the right of withdrawal in the context of digital transactions. However, we think that it should be carefully assessed whether the additional benefit for the consumer offsets the costs for the traders to implement this new solution. We also notice that, according to this provision, the activation of the withdrawal button should result in an immediate confirmation of the exercise of the right of withdrawal, including the date and time at which it was exercised. In order to protect the consumer from possible typing errors, we suggest to clarify that such provision is without prejudice to the possibility for the trader to introduce electronic steps to request confirmation of the intention to withdraw. Moreover, according to para. 6, the Withdrawal Button would not be applicable where another EU act governing specific financial services contains rules on the exercise of the right of withdrawal (e.g., the CCD). As a result, the exercise of withdrawal could end up to be less simple for that kind of contracts where the right of withdrawal has been considered so important

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	<i>with Article 9 (2) or Article 16b (1) respectively.</i>	to made them subject to specific legislation. In light of the above, it could be explored the possibility to establish that – where concluded at distance – all contracts for financial services should provide the consumer with a withdrawal button, irrespective of whether they are subject to specific regulation or not. FI (Comments): While we are preliminarily open to the introduction of a withdrawal button, we welcome further discussion on whether a similarly high level of consumer protection could be attained with another instrument, considering the administrative burden the button could cause traders. Moreover, the withdrawal button should not narrow the possibility of the consumer to withdraw from the contract using other channels. EE (Comments): Estonia finds it important that consumers could easily use their right of withdrawal, but in the case of the proposed changes, a reasonable balance between different interests should be ensured, taking into account the added value for consumers and the costs incurred by businesses. Imposing such an obligation on financial service providers might lead to extensive expenses for

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		them. We didn't find a sufficient evaluation in the Commission's assessment report regarding the necessity and added value of the withdrawal button for consumers, nor the anticipated costs specifically related to it. In addition, with the creation of a withdrawal button, there is a risk that the consumer will press the button by accident and will therefore be deemed to have withdrawn from the contract. Therefore questions may arise as to whether the consumer has actually submitted an unequivocal application for withdrawal. Further explanations would also be needed as to how the withdrawal button should work in practice – whether it must work when logged into the website of the financial service provider or how identification works; should the consumer choose which contract to withdraw from or how will the electronic interface differentiate which contract to withdraw from; will there be any mark left after the consumer has pressed the button, etc. In this regard, further clarifications from the Commission would be welcomed. It also raises a question why is the obligation to provide a withdrawal button only stipulated in the case of distance contracts for financial services. If it is found that corresponding solution significantly simplifies the exercise of the consumer's right of withdrawal, then the question arises, why isn't this obligation also stipulated in the case of other distance contracts,

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		for example in the case of sale of goods, which in practice is probably a much more relevant question in terms of the right of withdrawal. Also, if the sector specific legislation of the financial service is applied instead of the regulations on the distance contracts of financial services, where the right of withdrawal is regulated without the requirement of a withdrawal button, financial service providers will be in an unequal position. Therefore, we consider it necessary to carry out further analysis and explanations from the commission regarding the necessity and proportionality of establishing an obligation for traders to provide a withdrawal button. We also think it would be worth considering whether, instead of the obligation to create a withdrawal button, it could still remain as an option for each service provider. DE (Comments): The Federal Government in general strongly supports the idea of a withdrawal button and therefore welcomes this proposal as an important step forwards. But the electronic withdrawal button should apply across all sectors to all types of distance contracts covered by the CRD. Hence, the Federal Government again refers to its proposal to introduce an electronic withdrawal button in the CRD regarding the negotiations for the “Directive of

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		the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information.” Both the present proposal and the proposal as regards Empowering Consumers will change the CRD. Hence, it is a good opportunity to quickly and easily integrate the general withdrawal button into the CRD – also in a well defined and separated way from the other issues and supplements in the two proposals. There is no conceivable reason why there should be only a withdrawal button for financial services and not for goods and other services. In addition we propose a two-step procedure allowing for clear identification of the contract. This may be necessary in particular for reasons of legal certainty and data economy. It furthermore prevents the withdrawal of contracts by mistake as consumers have to confirm the withdrawal in the second step. With the "similar functions", the proposal also offers flexibility for the member states, e.g. a declaration of withdrawal via a link in the withdrawal instruction or in a confirmation e-mail. SI (Comments): The Republic of Slovenia welcomes the effort to

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		make it easier for the consumer to withdraw from the contract, but the proposed solution is not comprehensive. Moreover, the withdrawal button should not narrow the possibility of the consumer to withdraw from the contract using other channels. The question arises of how to provide such a button on the online interface (video call) that was used to conclude the contract at a distance and must be permanently available throughout the cancellation period and in some other way the company can still provide such a button. A single solution and a single withdrawal button scheme should also be found for the entire future scope of the Consumer Rights Directive and not only for the financial services contracts, concluded at a distance.
The withdrawal button shall be placed in a prominent manner and permanently available during the entire withdrawal period on the same electronic interface as the one used to conclude the distance contract. In addition, the trader may also provide the withdrawal button through another channel.	IE (Drafting): The withdrawal button shall be placed in a prominent <u>position</u> and permanently available during the entire withdrawal period on the same electronic interface as the one used to conclude the distance contract. In addition, the trader may also provide the withdrawal button through another channel.	AT (Comments): The requirement that the withdrawal button “shall be placed ... on the same electronic interface as the one used to conclude the distance contract” could be too narrow because this could mean that the consumer has to click again through all the pages leading to the conclusion of the contract.

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		GR (Comments): The requirement that the withdrawal button “shall be placed ... on the same electronic interface as the one used to conclude the distance contract” could be too narrow because this could mean that the consumer has to click again through all the pages leading to the conclusion of the contract. IE (Comments): Does this mean that the button can be provided in either place or that it must be provided on the same interface but can be provided somewhere else as an additional measure? PT (Comments): In addition to this provision, <u>it should be established an obligation for traders to make available the withdrawal button in the same page (or, at least, accessible directly from it) used to conclude the agreement</u>, so that the consumer does not have to spend time browsing the site looking for the specific subpage where the withdrawal button is made available. EE (Comments): We would need more clarification on the definitions of “same electronic interface” and “another channel”.

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		We would also like to clarify following: if a financial service provider decides to establish the withdrawal button to all their distance contracts for financial products (including the products that fall under a sector specific EU regulation), is this allowed or may there be any restrictions in the sector specific EU regulation or some horizontal EU regulation, including CRD? HR (Comments): In this provision, the phrase "<i>on the same electronic interface</i>" is used. We believe that a restrictive interpretation of that expression could result with the practice that withdrawal button can only be enabled on the webshops. However, distance contract can also be concluded through other means of e-communication, for example through e-mail. Therefore, <u>we propose to clarify in the accompanying recital that the term "<i>electronic interface</i>" can be interpreted extensively and that it includes, for example, contracts concluded through e-mail.</u> E.g. in such case, consumer can receive an automatically generated e-mail containing button - link through which consumer can withdraw from the contract. DE (Comments): Reference to the general proposal for an Art. 11a (see above), which replaces Art. 16b (5).

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		SI (Comments): SI suggests to give an examples in recitals how the withdrawal button could be provided through another channel. Should it be “a button” or could also be just another channel as “electronic address”.
The trader shall ensure that the activation of the withdrawal button results in an instant confirmation notice to the consumer that the right of withdrawal has been exercised, which shall include the date and time of the exercise of the right of withdrawal. Confirmation of the exercise of the right of withdrawal shall be provided by the trader to the consumer on a durable medium.	AT (Drafting): The trader shall ensure <u>that after the activation of the withdrawal button, the consumer ist asked to easily confirm or negate his intention. A confirmation shall result</u> in an instant confirmation notice to the consumer that the right of withdrawal has been exercised, which shall include the date and time of the exercise of the right of withdrawal. Confirmation of the exercise of the right of withdrawal shall be provided by the trader to the consumer on a durable medium.	AT (Comments): If the activation of the withdrawal button has to result in an instant confirmation notice to the consumer that the right of withdrawal has been exercised, the button could be activated by mistake which would result in an immediate withdrawal. It should be possible to demand confirmation after the withdrawal button was activated e.g. by confirming a question like “do you really want to withdraw from the contract?” GR (Comments): If the activation of the withdrawal button has to result in an instant confirmation notice to the consumer that the right of withdrawal has been exercised, the button could be activated by mistake which would result in an immediate withdrawal. It should be possible to demand confirmation after the withdrawal button was activated. PL (Comments):

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		What is meant by “activation”? Should clicking the button result in immediate withdrawal or is it possible to display a confirmation dialogue in order to prevent accidental and unintended withdrawal? DE (Comments): Reference to the general proposal for an Art. 11a (see above), which replaces Art. 16b (5).
6. Where another Union act governing specific financial services contains rules on the exercise of the right of withdrawal, only the right of withdrawal rules of that Union act shall apply to those specific financial services, unless provided otherwise in that act.	AT (Drafting): 6. Where another Union act governing specific financial services contains rules on the exercise of the right of withdrawal, only the right of withdrawal rules of that Union act shall apply to those specific financial services, unless provided otherwise in that act. BE (Drafting): Where another Union act governing specific financial services contains rules on the exercise of the right of withdrawal, only the right of withdrawal rules of that Union act shall apply to those specific financial services, unless provided otherwise in that act. HR (Drafting): Where another Union act governing specific financial services contains rules on the exercise	AT (Comments): Referring to “rules on the <u>exercise</u> of the right of withdrawal” seems to be too narrow. Instead it should be only necessary that the Union act contains any rules on the right of withdrawal – regardless of whether this also includes rules on how to exercise it. It should be enough that the Union act deals with the questions whether or not the consumer has a right of withdrawal. This understanding is confirmed by recital 13 which specifically mentions Article 14(6) of Directive 2014/17/EU which does not contain a mandatory right of withdrawal. In fact member states can choose between a right of withdrawal and a reflection period before the conclusion of the credit agreement. Not only regarding Article 16a (6) but also regarding Article 16b (b) it would be desirable to list in a recital all those specific financial

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	of the right of withdrawal, only the right of withdrawal rules of that Union act shall also apply to those specific financial services, unless provided otherwise in that act.	services (and the respective Union acts) to which Article 16b does not apply – or at least most of them. In addition the remaining types of financial services to which Article 16b currently does apply should also be listed demonstratively. SK (Comments): In our opinion, it is necessary to specify in Art. 3(2) CRD, which cases are concerned, with specific reference to such relevant provisions. There may be cases where the DMFS will only be applied to certain situations (as pointed before, in case of consumer credits, the withdrawal button will only apply to credits up to €200 and over €75,000 and it will not be necessary for consumers credits from €200-75,000), so it is questionable, whether such legislation is desirable and appropriate. BE (Comments): We suggest to delete the words ‘the exercise of’ since it is also possible that a Union act leaves a leeway for Member states for the introduction of a right of withdrawal. If a choice is made not to introduce a right of withdrawal into national law this national decision would be overruled by this provision and the right of withdrawal of this proposal would be applicable. IT (Comments):

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		See the comment at art. 1(1)(a)(1b). PT (Comments): Please see our comments to Article 16a, (6) of the Proposal. EE (Comments): In our view these rules need further clarification. Alongside with art. 3(2) of CRD, it is not entirely clear what rules are to be used in case of conflicts. It is not unequivocally clear which rules should apply, if the sector specific act has regulated only individual aspects, which could perhaps be based on the assumption that the otherwise valid general regulation of distance contracts would apply in other respects. Or if the sector specific legislation provides different options for achieving a similar goal, which do not exactly match what is in the proposal, for example, the possibility for the Member State to choose between the right of withdrawal or the reflection period. It is crucial that the question of which provisions apply is very clear to all market participants. HR (Comments): Rules on the exercise of the right of withdrawal regulated by special Union acts <u>should not exclude rules on the exercise of the right of</u>

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		<u>withdrawal</u> under this Proposal but rather should complement them. DE (Comments): Preliminary remarks with regard to Article 16b para. (6): Germany strongly welcomes the proposals of the Commission on the primacy of specific EU legal acts with regard to informational duties (Article 16a para. (6)) and the right of withdrawal (Article 16b para. (6)). However, since these specific EU legal acts regulate information obligations and rights of withdrawal very differently, further clarifications are necessary in order to achieve sound and complete solutions. Hereinafter, only a few, non-exhaustive, cases shall be mentioned: a. Payment Service Directive 2 (PSD2) There are special legal acts, like the PSD2, that only provide for information requirements, but not for a right of withdrawal. Should the beginning of the right of withdrawal under Article 16b then be linked to the information requirements foreseen by the DMFS or to the informational duties foreseen by the PSD2? Germany advocates the latter solution (the right of withdrawal under Article 16b para. (6) only starts to run, when the informational duties under PSD2 are fulfilled). This solution is in

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		line with the intended regulatory objective of Article 16a and Article 16b para.(2). See also comment Article 16b paragraph 1 second subparagraph lit (b). b. Mortgage Credit Directive (MCD) Then there are legal acts that provide for both information requirements and a right of withdrawal, but exclude certain products from the right of withdrawal or apply only part of their information requirements to some products (such as Article 3 para. (5) MCD with regard to promotional loans). What should then apply? More in-depth discussion is necessary on these points. The following solutions might be advisable on first sight: aa. financial services excluded from the right of withdrawal of the specific legal act: the right of withdrawal under the DMFS should apply. bb. the informational duties of the specific legal act apply only partially to some financial services: only the pre-contractual informational duties of the specific legal act should remain applicable only. c. Consumer Credit Directive (CCD) The CCD provides for pre-contractual information, for contractual information and for a right of withdrawal. The beginning of the right of withdrawal is linked to the fulfilment of the contractual information, not of the pre-

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		contractual information. Thus, in this case, the Commissions proposal does not lead to a clear result (which is not surprising as the DMFS does not regulate contractual information). However, for reasons of legal certainty, a clarification is necessary. In the following, we present preliminary regulatory proposals that would still need to be discussed in detail.
	DE (Drafting): Where another Union act governing specific financial services contains rules on the exercise of the right of withdrawal, only the rules on the right of withdrawal, its exercise and its conditions according to that Union act shall apply to those specific financial services, unless provided otherwise in that act. This also applies if the Union act gives the member states a margin of implementation between the regulation of a right of withdrawal or another regulation that is comparable in its result. To be discussed: (2) Where, pursuant to the Union act referred to in subparagraph (1), the	DE (Comments): The words “on the exercise of” in Article 16b(6) should be deleted, as they allow for the misconception that only the modalities of exercise and not the pre-conditions of the right of withdrawal depend on the specific Union act. It would also be important to clarify that the sector-specific legal acts take precedence not only for the existence of the right of withdrawal and the modalities for exercising it, but also with regard to its pre-conditions. The CCD, for example, does not link the start of the withdrawal period to pre-contractual information (which Article 16a(6) regulates), but to mandatory information in the contract (which the DMFS does not regulate). In order to create very clear rules, it should be clarified that the right of withdrawal and its conditions as a whole depend on the specific legal act. In

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	beginning of the withdrawal period is subject to conditions other than pre-contractual information, only the provisions of the other Union act shall apply with regard to the beginning of the withdrawal period referred to in Article 16b para. (1). (3) Where the Union act referred to in subparagraph (1) does not provide for a right of withdrawal at all or for certain financial services, but provides for pre-contractual information, only the information requirements of the other Union act shall apply with regard to the beginning of the withdrawal period referred to in Article 16b para. (1). This also applies if the other Union act only provides for a reduced set of pre-contractual information for certain financial services.	addition to the proposed addition, it should be clarified in a recital that the above also applies if the right of withdrawal is linked to mandatory information in the contract (and not to pre-contractual informations). If the national legislator has a margin of implementation (for example, the Residential Mortgage Credit Directive leaves it to the Member States to determine either whether a contractual cooling-off period or a right of withdrawal) it should be clarified, that the subsidiarity rule applies, too. Affected legal acts should be listed by way of example in a recital. (2) CCD situation (3) First alternative (no right of withdrawal at all): PSD situation Second alternative (no right of withdrawal for some products): e.g. MCD situation Last sentence: MCD situation (Art. 3 para. 5).
Article 16c	DE (Drafting): 7. If to a distance contract of a given financial service another distance contract has been attached concerning services provided by the supplier or by a third party on the basis of an agreement between the third party and the supplier, this additional distance contract shall be cancelled, without any penalty, if the	DE (Comments): It is unclear why there should be no need for a provision as currently foreseen in Article 6 paragraph 7, second subparagraph, of the Directive 2002/65/EG. If the proposed provision is included, the current Article 7 paragraph 5 of the Directive 2002/65/EG would also have to be adopted.

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	consumer exercises his right of withdrawal as provided for in paragraph 1.	
Payment of the service provided before withdrawal	DE (Drafting): 8. Member States may adopt or maintain additional rules on the right to withdrawal for contracts to which this Article applies.	DE (Comments): The German Insurance Contract Law provides for rights of withdrawal for all policyholders (and special pre-contractual information obligations for specific insurance products) that go beyond those provided here. It should be ensured that these remain in place and that further new ones may be added. It should also remain possible to make the beginning of the withdrawal period dependent upon the consumer receiving further information provided for under other Union acts where this information is important for the consumer's decision and the Union legislation leaves the sanctions up to Member States. Making the beginning of the withdrawal period dependant upon the reception of this information is a very effective sanction and particularly suitable for protecting the consumer's ability to make an informed decision.
1. Where the consumer exercises the right of withdrawal under Article 16b, the consumer may only be required to pay, without any undue delay, for the service actually provided by the trader in accordance with the distance contract.		

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The amount payable shall not:		
	FR (Drafting): 2. Member States may provide that the consumer cannot be required to pay any amount when withdrawing from insurance contract.	FR (Comments): The deletion of paragraph 2 of Article 7 of the current directive, according to which Member States may provide that the consumer cannot be required to pay any amount when withdrawing from an insurance contract would be a step backward. We suggest to keep this possibility in order to better protect consumers, by enabling them to fully use their right of withdrawal. In addition, this deletion creates practical questions in terms of amount to be repaid in case of withdrawal (fees...).
(a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the distance contract;		
(b) in any case be such that it could be construed as a penalty.		

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2. The trader may not require the consumer to pay any amount on the basis of paragraph 1 of this Article unless the trader can prove that the consumer was duly informed about the amount payable, in conformity with Article 16a(1), point (p). However, in no case may the trader require such payment if the trader has commenced the performance of the contract before the expiry of the withdrawal period provided for in Article 16b(1) without the consumer's prior request.		
3. The trader shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums the trader has received from him in accordance with the distance contract, except for the amount referred to in paragraph 1. This period shall begin from the day on which the trader receives the notification of withdrawal.		
4. The consumer shall return to the trader any sums he or she has received from the trader without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer withdraws from the contract.		IE (Comments): No later than 30 calendar days – consistent with Consumer Credit Directive 2008/48/EC

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Article 16d		GR (Comments): As far as Article 16d and 16e are concerned, the adoption of measures regarding online fairness seems relevant, as distance selling of products can impair the consumer's ability to fully understand the specificity of the financial service and to make a well-informed decision, since in recent years, especially during the pandemic, the competent authorities in our country for the control and supervision of financial services have been faced with the increase of new harmful practices aimed at reducing the ability of consumers to make free decisions. FR (Comments): As far as Article 16d and 16e are concerned, the adoption of measures regarding online fairness seems relevant, as distance selling of products can impair the consumer's ability to fully understand the specificity of the financial service and to make a well-informed decision. These articles are all the more relevant that in the past few years, French authorities in charge of controlling and supervising financial players have seen the rise of new harmful practices aiming at reducing consumer's ability to make free decisions.
Adequate explanations		

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1. Member States shall ensure that traders are required to provide adequate explanations to the consumer on the proposed financial services contracts that make it possible for the consumer to assess whether the proposed contract and ancillary services are adapted to his or her needs and financial situation. The explanations shall include the following elements:	IE (Drafting): Member States shall ensure that traders are required to provide adequate explanations to the consumer on the proposed financial services contracts that make it possible for the consumer to assess whether the proposed contract and ancillary services are adapted to <u>their</u> needs and financial situation. The explanations shall include the following elements: PT (Drafting): <i>'Member States shall ensure that traders are required to provide adequate explanations to the consumer on the proposed financial services contracts that make it possible for the consumer to assess whether the proposed contract and ancillary services are adapted to his or her needs and financial situation. The explanations shall include, at least, the following elements:'</i>	AT (Comments): We have doubts if the obligation to provide adequate explanations is appropriate for all types of contracts falling within the scope of the Directive – especially in view of the fact that this Directive is aimed at future developments and does not contain a value threshold. We believe that this provision requires further consideration. IE (Comments): -inclusive language IT (Comments): With reference to Article 16d (“Adequate explanations”), we notice that a similar rule is provided for in the CCD review, with the difference that the CCD text allows Member States to adapt the requirements to the specific circumstances, target audience and nature of the product offered. We do not see the reason for this difference and suggest, therefore, maintaining in this Directive the flexibility provided by the CCD. PT (Comments): In our view, this provision should establish a minimum list of explanations to be presented to the consumer. EE

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		(Comments): In general, we think that the Commission's proposal to introduce an obligation for the financial service providers to provide adequate explanations about the services and for the consumer to request human intervention when using an online tool could be beneficial for the consumers. However these changes require additional analysis, especially regarding the alignment of this provision with other instruments. We would like to indicate that the obligation for adequate explanations can also be found in Mortgage Credit Directive and in the initiative of the new Consumer Credit Directive. In both, the Member States are left with the opportunity to adjust the requirements taking into account specific circumstances, the target group and the nature of the offered product. Therefore, it should be analysed whether the rule of providing adequate explanations planned for distance contracts should be more aligned with them. In doing so, we consider it important to further analyse whether establishing such an obligation in the consumer rights directive only for distance contracts is appropriate.
(a) the required pre-contractual information;		DE (Comments):

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		From the Federal Government's point of view, the specific meaning and purpose is not clear and also what regulations necessarily need to be implemented by the national legislature. For an error-free implementation of these requirements, they should be further clarified. It is not clear at all what the term "adequate explanations" implies. For example, does it mean that the trader, in addition to providing the pre-contractual information, also somehow has to provide some sort of consultation/counsel or that the specific situation of the consumer and his personal needs and financial situation must be taken into account (so no mere standardized information) or just "explain" this information to the consumer? However, we are sceptical that this approach is appropriate in the insurance sector, considering that the definition of "insurance distribution" in the IDD has been updated to reflect online distribution and that this directive already regulates advice to the customer.
(b) the essential characteristics of the proposed contract, including the possible ancillary services;		
	PT (Drafting): '(ba) Where applicable, the various stages of	PT (Comments): The list established by this provision should

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	<i>the process necessary to conclude the contract, as well as the documents that must be available by consumers to the trader for that purpose;</i>	include information regarding the process necessary to conclude the contract.
(c) the specific effects that the proposed contract may have on the consumer, including the consequences of payment default or late payment by the consumer.		DE (Comments): How does this provision differ from Art. 16a (I) (f)?
	BE (Drafting): <i>As regards compliance with the adequate explanations requirements laid down in this Article, the burden of proof shall be on the trader.</i>	BE (Comments): In contrary to article 16a.5, article 16d does not mention that the burden of proof shall be on the trader. Belgium suggests to add this to art. 16d.1 of the proposal in order to improve consumer protection and legal certainty.

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2. Paragraph 1 shall also apply to explanations provided to the consumer, when using online tools such as live chats, chat bots, roboadvice, interactive tools or similar approaches.		AT (Comments): It is unclear why para 2 is considered necessary. Why should para 1 not be applicable when using online tools? Moreover the meaning of the terms “live chats”, “chat bots”, “roboadvice” and “interactive tools” should be defined or at least addressed in a recital.
	PT (Drafting): <i>‘Member States shall ensure that traders are required to use these tools in a proportionate manner, especially considering the complexity of the services provided and, thereby, guaranteeing an adequate assistance to consumers.’</i>	PT (Comments): It should be established that the tools used to provide explanations / assistance to consumers should be proportionate to the complexity of the product or service, the information presented and the process to conclude the agreement.
3. Member States shall ensure that, in case the trader uses online tools, the consumer shall have a right to request and obtain human intervention.	IE (Drafting): 3. Member States shall ensure that, <u>where</u> the trader uses online tools, the consumer shall have a right to request and obtain human intervention. IT (Drafting): 3. Member States shall ensure that, in case the trader uses online tools, the consumer shall have a right to request and obtain human intervention <u>at every stage of the negotiation process and/or contractual relationship.</u>	AT (Comments): We are not convinced that the right to request human intervention is appropriate for all types of contracts falling within the scope of the Directive. As already stated with respect to para 1 it should be considered that this Directive is aimed at future developments and does not contain a value threshold. Since future developments might be specifically designed to be executed without human intervention this provision could impose a disproportionate burden that is not justified by the needs of consumers. Therefore we believe that also para

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		3 requires further consideration. Apart from this we are not sure about the relevance of the wording “in case the trader uses online tools”. Are cases without human intervention possible in which the trader does not use online tools? If yes, why are these cases treated differently? PL (Comments): What should be the timeframe for obtaining human intervention? Should that happen at the time consumer is still using the online tool or later? IT (Comments): In order to make this provision effective, it would be important to specify that the consumer may request human intervention “at every stage of the negotiation process and/or contractual relationship” DE (Comments): The proposed rules in paragraphs 2 and 3 with regard to online tools and thus the introduction of consumer rights in online tools and online means of communication, as well as the right to human intervention, are very interesting proposals and are in general supported. Such proposed rules for consumer rights in online tools and online means of communication as far as we can see, have not been included in any

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		other legal act yet. The importance of online communication (e.g. via automated tools such as chatbots or robo-advisers or non-automated tools such as live chats) is not only steadily increasing in the field of remote financial services, but in general for all consumer transactions on the Internet. Therefore, the horizontal introduction of such regulations to all types of distance contracts covered by the CRD should be considered. Therefore, from our point of view, it is questionable whether legislation such as Article 16d(2) and (3) should be limited to the financial services sector.
4. Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, paragraphs 1 to 3 of this Article shall not apply.	HR (Drafting): Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, paragraphs 1 to 3 of this Article shall not apply.	SK (Comments): In our opinion, it is necessary to specify in Art. 3(2) CRD, which cases are concerned, with specific reference to such relevant provisions. IT (Comments): See the comment at art. 1(1)(a)(1b). PT (Comments): Please see our comments to Article 16a, (6) of the Proposal. EE (Comments): In our view these rules need further clarification.

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		The wording of the proposed art. 16d(4) also needs to be clarified. It is not clear whether the provision concerns only explanatory obligation or pre-contractual information regulated by art. 16a. Alongside with art. 3(2) of CRD, it is not entirely clear what rules are to be used in case of conflicts. It is not unequivocally clear which rules should apply, if the sector specific act has regulated only individual aspects, which could perhaps be based on the assumption that the otherwise valid general regulation of distance contracts would apply in other respects. Or if the sector specific legislation provides different options for achieving a similar goal, which do not exactly match what is in the proposal, for example, the possibility for the Member State to choose between the right of withdrawal or the reflection period. It is crucial that the question of which provisions apply is very clear to all market participants. of withdrawal or the reflection period. HR (Comments): As explained above in the section related to the Article 16a Paragraph 6 of the Amendments of the Directive 2011/83/EC, obligation to provide consumer with pre-contractual information in special Union laws <u>should not exclude</u>

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		<u>obligation to provide pre-contractual information</u> under this Proposal, but should rather complement them.
Article 16e		DE (Comments): The meaning and purpose and scope of the subsidiarity rule in paragraph 4 are unclear. It is not clear if this article is only subsidiary to the extent that the information to be provided under the other Union act matches the information here and if the information to be provided under the other Union act can be considered conclusive. According to the current wording, it is also unclear whether pre-contractual information obligations in another EU act supersede the explanatory obligations laid down here, or whether this should only apply if the other EU acts not only regulate pre-contractual information obligations, but also the obligation to explain them if necessary. It is recommended that the recitals as well as a footnote provide examples and references to legal acts (e.g. PSD2 and MiCA) to provide a better legal certainty. The scope and coverage of this standard should be presented more clearly. COM has stated that Art. 16d (1) (b) and (c) should apply where another Union act governing financial services only contains rules on precontractual information obligations as mentioned in Art. 16d (1)(a). This has to be mirrored in the

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		provision itself. Furthermore, COM shall provide for an exhaustive list of other specific Union law acts on financial services where this exemption applies.
Additional protection regarding online interfaces		

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Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council²¹ and Council Directive 93/13/EEC²², Member States shall adopt measures requiring that traders, when concluding financial services contracts at a distance, do not use the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers' ability to make a free, autonomous and informed decision or choice.	FR (Drafting): Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council²³ and Council Directive 93/13/EEC²⁴, Member States shall adopt measures requiring that traders, when concluding financial services contracts at a distance, do not use the structure, design, function or manner of operation of their online interface in a way that could deceive, manipulate, distort or impair consumers' ability to make a free, autonomous and informed decision or choice.	AT (Comments): It is unclear what specific measures need to be taken here by the Member States. What specific behaviors are to be prohibited? Recital 27 is not helpful but only repeats the wording of Article 16e. As this Directive is fully harmonised this provision should be much more precise. GR (Comments): It is unclear what specific measures need to be taken here by the Member States. What specific behaviors are to be prohibited? Recital 27 is not helpful but only repeats the wording of Article 16e. As this Directive is fully harmonised this provision should be much more precise. BE (Comments): Clarification is needed on what specific measures need to be taken by the Member States. FR (Comments): Minor wording adjustment : alignment with

²¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

²² Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

²³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

²⁴ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

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		Articles 23a of the Digital Services Act IT (Comments): As regards Article 16e (Additional protection regarding online interfaces), we appreciate the aim of mitigating the risk of cognitive or behavioral biases. Nonetheless, it would be appropriate to provide further clarification on this provision and ensure the coordination with the negotiations on Artificial Intelligence Regulation, currently ongoing²⁵. FI (Comments): Is this Article meant as a reference to 'dark patterns'? If this is the case, are there plans to elaborate on features or practices which are in breach of this Article? EE (Comments): In general we agree that the consumers should be protected against misleading practices. However, the provision is phrased rather generally, which allows for a broad interpretation and may cause some legal uncertainty. We believe that with such wording

²⁵ In particular, see, in the version of the second compromise, recital 8 [*“Without prejudice to powers provided under Regulation (EU) 2019/1020, and where relevant and limited to what is necessary to fulfil their tasks, the market surveillance authorities shall be granted full access by the provider to the documentation as well as the training, validation and testing datasets used for the development of the high-risk AI system, including, where appropriate and subject to security safeguards, through application programming interfaces (‘API’) or other relevant technical means and tools enabling remote access”*] and art. 52(3) [*“3. Users of an AI system that generates or manipulates image, audio or video content that appreciably resembles existing persons, objects, places or other entities or events and would falsely appear to a person to be authentic or truthful (‘deep fake’), shall disclose that the content has been artificially generated or manipulated.”*]

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		it's not uniformly clear how this obligation should be implemented by the Member States and how the supervisory authorities would be able to assess whether the obligation has been violated. To the extent that this provision is included in a harmonised directive, it should be clear what obligations are imposed. Therefore, we consider it necessary to receive additional explanations from the commission so that the legal norm can be defined more precisely. Clarifications would also be needed in terms of how the proposed regulation relates to other legislation. For example, it is necessary to clarify what effect the provision has in relation to the provisions of the Unfair Commercial Practices Directive, which already prohibit the use of various unfair practices towards consumers. We would also like the Commission to clarify the reasons for including such an obligation only among the provisions governing distance contracts for financial services. Also, whether the Consumer Rights Directive, which so far governs pre-contractual information requirements and the right of withdrawal, is the appropriate venue for the purpose of such a rule. DE (Comments): The German Government generally welcomes the

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		proposed rules on online user interfaces. This strengthens the consumer's freedom of choice and protects him from dark patterns. There will be a similar regime in the future for the specific area of online intermediation platforms under the Digital Services Act. Nevertheless, it is still questionable why such a general rule as proposed should be limited to financial services and hence regulated with a very limited scope. There is no answer to this question in the impact assessment document. Futhermore, the CRD regulates mainly pre-contractual information obligations and the rights of withdrawal. Against this backdrop would it not be better to include the rule of Art 16e in another and more suitable directive (for instance in the Directive 2005/29/EC)? Has the Commission considered this option? SI (Comments): According to the DMFS proposal, measures on the online interface must not distort or hinder the ability of the consumer to ensure a free, autonomous and informed decision or choice on the part of the consumer. The provision is not very precise. Therefore SI would like to ask the Commission to present some concrete practices (measures) in the field

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		of distance contracts for financial services that could distort the ability of the consumer to make an autonomous decision. We also propose to provide some examples in the recital. Furthermore, SI wonders why the Commission proposes to regulate dark patterns specifically in this directive, but not in other consumer legislation. We would like to ask the Commission if it intends to regulate this matter more specifically in the future or the Commission believes that the current provisions of the UCPD, CRD and UCTD are sufficient to address those practices. We also have a question if the provision of Art. 16e will apply to the CCD in case of distance contracts.
		SI (Comments): SI like IT wonders how the supervisory authorities will be able to assess whether the design and operation of online interfaces really hinders the consumer's decision-making.
<i>Article 2</i>		
Transposition		
1. Member States shall adopt and publish by [24 months from adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They		FI (Comments): Finland deems it important to provide traders with a six-month transition period for the

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shall forthwith communicate to the Commission the text of those provisions.		necessary adjustments to their data systems and internal procedures.
They shall apply those provisions from [<i>the date after 24 months from adoption</i>].		
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.		
2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive.		
Article 3		
Repeal		
Directive 2002/65/EC is repealed with effect from [<i>24 months from adoption</i>].		FI (Comments): To accommodate the timetable to our suggestion of a six-month transition period, the date for repeal should be 30 months (24+6) from adoption.

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References to the repealed Directive shall be construed as references to Directive 2011/83/EU, as amended by this Directive, and shall be read in accordance with the correlation table set out in the Annex to this Directive.		
Article 4	DE (Drafting): Article 3 Amendment to Directive 2014/17/EU Article 14 is amended as follows: (a) paragraph 6 subparagraph 6 is repealed. (b) paragraph 7 is repealed. (c) paragraph 10 is repealed. Article 4 Amendment to Directive 2015/2366/EU (1) Article 39 subparagraph 2 is repealed. (2) Article 110 is repealed.	DE (Comments): In addition to changes in the references, other consequential changes are necessary in some of the Union acts governing specific financial services due to the precedence of them now being explicitly regulated. Any necessary adjustments to the CCD / CCD 2 should also be kept in view. In particular, as Art. 39 subpara. 2 and Art. 110 are repealed it needs to be explicitly highlighted that the sector specific rules of the PSD2 prevail with regard to Art. 16a (6), Art. 16b (6) and Art. 16d (4) (see comments under the respective articles.)
Entry into force		
This Directive shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i> .		

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Article 5		
Addressees		
This Directive is addressed to the Member States.		
Done at Brussels,		
For the European Parliament For the Council		
The President President		
	End	End