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NOTE

From:	Delegations
To:	Working Party on Consumer Protection and Information (Consumer Credits) 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 - Member States' comments to doc. 13060/22

Delegations will find attached drafting suggestions and comments from AT, BE, DK, EE, ES, FI, GR, HR, IE, IT, MT, RO, SE, SI and SK on the Presidency compromise text.

<i>Doc. 13060/22</i>	<i>Drafting Suggestions</i>	<i>Comments</i>
2022/0147 (COD)		
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		SE (Comments): Sweden still has a parliamentary scrutiny reservation and the written comments are preliminary.
(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,		
Having regard to the opinion of the European		

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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 trader and a consumer.		

¹ ...

² ...

³ 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).

⁴ 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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(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.		
(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.		
(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.		BE (Comments): We refer to our previous comments and our comments in article 1(a). IT (Comments): See the comment at art. 1(1)(a)(1b). IE (Comments): Ireland has identified some differences in our

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Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation.		transposition process that were not part of the 2002 Directive on Distance Marketing. We believe that Member States should have the ability to introduce or maintain measures that provide a greater level of consumer protection.
(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.		
(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		

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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.		
(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.		

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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).
(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		IT (Comments): See the comment at art. 1(1)(a)(1b).

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widespread infringements with a Union dimension.		
(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.		
(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.		

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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,	IE (Drafting): ... In order to ensure legal certainty, it should be clarified that where another Union act governing specific financial services contains rules relating to matters covered by this Directive 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. ...	BE (Comments): - Does this mean that only the rules on pre-contractual information of the other Union Act will then apply, irrespective of whether these rules are conflicting with the pre-contractual information requirements of this Directive? How does this relate to the application of the “lex specialis” principle of article 3(2) CRD, which refers to “conflicting” provisions of other Union Acts governing specific sectors. - What if a Union Act governing specific consumer financial services does provide for pre-contractual information requirements, but does not provide for a right of withdrawal. In such case, which the precontractual information requirements are applicable? For example: Art. 16c (2) provides that the trader may not require the consumer to pay any amount on the basis of paragraph 1 of that

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).

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certain Union acts governing specific financial services ⁷ 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 property ⁸ , 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.		Article unless the trader can prove that the consumer was duly informed about the amount payable, in conformity with Article 16a (1), point (p). If the other Union Act did not provide for a right of withdrawal, it is unlikely that this Union Act contains information requirements similar to the one in Article 16a (1), (p) and only the information requirements of that Union Act would apply. IT (Comments): See the comment at art. 1(1)(a)(1b). IE (Comments): Should the issue of <i>lex specialis</i> not extend to the aspects of CRD that are applied as well as to the provisions in A16a-e?

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)

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)

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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.		
(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"	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 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	HR (Comments): For the sake of clarity of the example, we suggest adding the full last sentence from the Recital 17 of the Directive 2002/65/EC to Recital 15 of this Proposal.

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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.	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.	
(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.		
(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	IE (Drafting): . In order to be able to make their decisions in full knowledge of the facts, consumers should receive the information in good time at least one day prior to the conclusion of the distance contract.	IE (Comments): Suggest change to reflect the changes in Article 16a(3).

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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.		
(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.		
(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.		

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(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-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.		
(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 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		HR (Comments): We 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 trader's webshop? Therefore, we suggest adding examples to clarify the term "<i>additional pages</i>".

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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.		
(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		

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download all the pre-contractual information document and to save it as a stand-alone document.		
(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.		
(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): In order for to ensure the effective use of the withdrawal button....	
(26) Consumers may need assistance in order		

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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.		
(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.		HR (Comments): It is necessary to provide examples in the respective recital in order to clarify what exactly constitutes "<i>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 decision or choice</i>", to avoid differences in

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		application among MS.
(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.		
(31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁹ , Member States have undertaken to accompany, in justified cases, the notification of		

⁹ OJ C 369, 17.12.2011, p. 14.

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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		
Directive 2011/83/EU is amended as follows:		
(1) Article 3 is amended as follows:		
(a) the following paragraph (1b) is inserted:		
‘(1b) Only 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.	IT (Drafting): ‘(1b) Only 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	AT (Comments): We very much appreciate the deletion of Article 24 (2), (3) and (4). These paragraphs should not be made applicable to distance contracts for financial services. Member states should be able to choose which

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	and a consumer for the supply of financial services. SI (Drafting):) Only Articles 1 and 2, Article 3(2), (5) and (6), Article 4, Articles 16a to 16e, article 15, 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) Only 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. IE (Drafting): Include Articles 27, 8(6) and 15 of the CRD. HR (Drafting): Only Articles 1 and 2, Article 3(2), (5) and (6),	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. It has to be kept in mind 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). ES (Comments): The reference to article 4 CRD is not necessary since the specific provisions of DMFSD2 establish a “minimum harmonisation” rule. We don’t consider art 16.(e) CRD should apply. SI (Comments): SI suggests to add article 15 of CRD (Directive 2011/83/EU) to the list of articles, that should apply also to financial services contracts, concluded at a distance. As already explained in the previous written comments, Article 6 (7) (second subparagraph) regarding the right of withdrawal on ancillary contracts, of the existing DMFSD is not specifically transferred

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	Article 4, Article 6a, 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 and 27 shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services.	to the new chapter of the CRD Directive. Article 15 of CRD (effects of the right of withdrawal on ancillary contracts) is not among the articles that would apply to financial service contracts concluded at a distance. BE (Comments): Concerning article 3(2) CRD (the lex specialis provision), it is necessary for the Member States to be able to keep and adopt national legislations (with stricter provisions) in minimum harmonised matters at European level, e.g. UCITS or AIFM. Concerning the level of harmonisation, a minimum harmonisation approach should be followed. We stress the safety net function of the DMFSD. We assume that Art. 4 of the CRD does not cover 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. SE (Comments): The word “only” gives the impression that MS cannot apply any rules other than those

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		specified. This proposal addresses rules on pre-contractual information, sanctions, right of withdrawal etc. The word “only” risks to imply that MS cannot regulate other issues, like marketing. As long as regulation is not prescribed in this full harmonization proposal, MS should be able to prescribe such. Consideration should also be given to referring to additional articles in the CRD. This provision could otherwise be understood as e.g. art. 8.6 cannot be applied to distance contracts for financial services. Also art. 15, 17, 3.1, 6 a, 8.2, 12, 13.4-7, 14.2 etc should be considered. An alternative is that it can be drafted that member states have the possibility to prescribe the application of more articles in CRD without explicitly referring to specific articles. 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

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		stating that whenever a EU sectorial legal instrument regulates a specific financial service, this discipline shall prevail on the one under the present 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 DMFSD 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. • Taking into account the EC comments about the principle of <i>lex specialis</i> at the last WP on Consumer Credit of October 13th, we would like to be confirmed that, whenever a sectorial legislation exists, the DMFSD does not apply even in the case the sectorial legislation does not mention all the rights provided for in DMFSD, in order to respect the decisions taken explicitly or implicitly by the sectorial legislator.

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		• As regards the appropriateness that the DMFSD is to some extent applied also to products/services already covered by sectoral legislation (by adding new rules, e.g. 16d, 16e, sanctions), we would also be skeptical about their application to harmonized products/services. In fact, the EU legislator has already carried out an assessment on what to regulate and on the level of harmonization to be adopted for each sectoral legislation. In this perspective, if the DMFSD were to apply to products/services already regulated by sectoral legislation, it would undermine the choices made by the legislator in each sector. • 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 DMFSD 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 DMFSD as the preferable option. Nonetheless, having regard to the maintaining of relevance of some provisions of the DFMSD in some sector, we consider questionable the