

# The European Commission's Directive on Distance Marketing of Consumer Financial Services: What Does This Mean for the Industry?

[Financial Institutions](#), [ACI Enterprise Payments Platform](#), [Banking](#)

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On May 28 2021, the European Commission (EC) issued an [Inception Impact Assessment on the Directive on Distance Marketing of Consumer Financial Services](#), which is out for public consultation until the **June 25**. For readers who are not familiar with the process, the EC publishes



Inception Impact Assessments (IIAs) to inform stakeholders about the EC's plans, in order to allow them to provide feedback on the intended initiative. On the June 22, the EC also published a [Public Consultation](#) on the same Directive, which will close on **September 28**.

The [Directive on Distance Marketing of Consumer Financial Services](#) dates back to 2002 and applies horizontally to any service of a banking, credit, insurance, personal pension, investment or payment nature. The directive sets out information obligations to be provided to the consumer prior to the conclusion of the distance contract (pre-contractual information), grants for certain financial services a right of withdrawal to the consumer, and bans unsolicited services and communications from suppliers. Already in 2017, the EC undertook an assessment of whether the legal framework for the distance selling market of retail financial services was still fit for purpose, in terms of consumer protection and information, and then published a [study](#) in 2019 that looked at how consumer behaviors were impacted by techniques used online by retail financial services providers at the advertising and pre-contractual stages. In November 2020, the EC published the [results of the evaluation of the directive](#) in question.

As the legal framework for retail financial services has evolved since 2002, the EC has announced it will review the directive with regard to the following aspects:

1. **Pre-contractual information requirements**, as these are not adapted to the digital environment: such information should, in the EC's opinion, be provided in a format that is adapted to the consumer's screen, located where it cannot be overlooked and presented in a user-friendly way and at the right point in time, namely not too close to the actual signature of the contract.
2. The **right of withdrawal**, as this is currently not fully effective, given that it consists of an ex-post opt-out within 14 days, rather than in a reflection period ex ante.

3. There are practices creating issues for consumers purchasing financial services at a distance that are not covered by the directive. These include non-transparent personalization of offers and display of the offers in a way that exploits consumer behavior (e.g. pre-ticked boxes).
4. Cross-border transactions of financial services have remained limited, while the aim of the directive was to increase the cross-border provision of financial services. This may be due, according to the EC, to the fact that some definitions of the directive might be unclear, for example “distance contract” or “in good time,” or due to the interactions and overlaps with other product-specific or horizontal legislation.

Of the possible four scenarios identified by the EC in the IIA — no policy change, repeal of the directive, repeal of the directive preserving relevant parts and a complete revision of the directive — the last option seems to be the one preferred by the EU, as in this case the directive could guarantee a safety net for consumers in cases that do not fall within any product-specific legislation. This could be the case for products such as **payday loans**, which are a type of credit agreement, contracted at a distance and below EUR 200, or the distance selling of **virtual currencies**. **The revision could see the introduction of rules on personalized advertising, on robo-advice, on the use of digital identities.**

As for the content of the [Public Consultation](#) on the same directive, the questionnaire covers the distance selling — e.g. via the internet by using a PC/smartphone/tablet or via the telephone or via postal service — of products such as **consumer credit (including credit cards), payment accounts, payment services (such as money transfer services)**, as well as investment products (e.g. shares, bonds or funds) and personal pension products. It also asks the general public how they perceive the directive in terms of efficiency and applicability.

While it may be questioned whether the directive is still relevant now that product specific ([Consumer Credit Directive](#), [PSD2](#)) and horizontal specific legislation ([e-Privacy](#), [Unfair business-to-consumer practices](#), [GDPR](#)) are in place, the merit of the review of this directive could be to enable protection for European consumers for any financial services product sold at a distance, for which specific legislation is yet to come — thereby effectively guaranteeing a safety net for European consumers.

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