

Response to EC roadmap consultation on DMD

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Referring to:	Distance-marketing of consumer financial services directive (DMD) (Directive 2002/65/EC)		
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Insurance Europe welcomes the European Commission's continued evaluation of the 2002 Directive concerning the distance-marketing of consumer financial services (Directive 2002/65/EC) (DMD).

As part of this review, consideration should be given to whether the DMD remains necessary, as it is not clear that the DMD continues to be relevant or add value following the implementation of recent product-specific legislation; a point also made in the roadmap. The DMD covers online sales of insurance products that are now also explicitly covered by the Insurance Distribution Directive (Directive (EU) 2016/97) (IDD). Therefore, the DMD scope should be reconsidered to avoid any inconsistencies or overlaps. Overall, the IDD should be the exclusive legal source for insurance distribution. If deemed to still be relevant and add value, the DMD must be updated to reflect that, since its introduction in 2002, product-specific EU legislation has been adopted and implemented, and to ensure that it is technology-neutral and future-proofed.

Concretely, the DMD, in its current state includes universal rules that have no link to the distribution channel of distance-marketing. It therefore creates legal uncertainty due to overlaps and duplications with newer product-specific EU legislation, such as the IDD and Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs).

If the DMD is to be retained, it should be revised to exclusively cover rules that are specific to distance-marketing. Requirements that are not solely applicable to distance-marketing should be removed from the DMD to avoid overlaps or duplications with (current and future) product-specific EU legislation.

For the same reason, the DMD should clarify that:

- Where there is duplication in disclosure requirements between different legal texts, product-specific legislation must take precedence.
- Where similar disclosure requirements are made under product-specific legislation, the requirements of the DMD are deemed to have been met.

These clarifications would avoid the risk of repetitive disclosure, which increases the volume of information to the detriment of consumers and their understanding of products.

Giving serious consideration to whether the DMD continues to be relevant or add value would also go in the right direction towards achieving the objectives of Better Regulation set out in the Commissions' April 2021

Communication; namely to aim to achieve a “one in, one out” legislative approach. The benefits of the DMD arose mainly from the provisions specific to distance-marketing as a distribution channel. For other provisions not exclusive to that distribution channel, product-specific legislation should be the source of requirements to avoid unnecessary compliance costs, duplication and legal uncertainty. Product-specific legislation now achieves harmonisation on other matters not specific to the distance-marketing channel for the distribution of products.

The DMD should also be technology-neutral and future-proof. To this end, the DMD should explicitly permit information provision via websites or electronically. Moreover, the current volume of information obligations may in practice cause difficulty when viewed, say, on a smartphone.

The development in technological devices (such as smartphones) has meant that information increasingly must be made accessible on different media and in an appropriate format. This impacts the volume of information that should be required to be given to customers. The added value and necessity of information requirements should therefore not be overlooked when reviewing the DMD, in a bid to avoid information overload. The necessity of the information provided to customers should therefore be carefully considered, as should the interaction of different disclosure requirements arising from different EU legislation. This assessment should also be made in reference to the requirements set out in more recent, product-specific EU legislation, including the IDD.

The roadmap pointed out that the right of withdrawal was not fully effective. According to some behavioural studies, this right might be most effective with an ex ante reflection period. Such a change of approach would be detrimental and not relevant especially where certain types of compulsory insurance demand the immediate performance of the contract, which is incompatible with an ex ante approach.

The roadmap considers possible reasons for why cross-border business remains limited. Insurance Europe would tend to agree with the conclusion that this is likely to be the result of natural obstacles (eg language, consumer preference etc) rather than due to legislative hindrances.

The roadmap refers to a 2019 behavioural study as one of the evidence bases to be used in reviewing the DMD. Insurance Europe previously highlighted concerns over that study’s content and approach in its consultation submission in July 2019 [\[link\]](#). In brief, concerns were summarised as follows:

- The study covers online practices relating to 10 distinct and distinguishable retail financial products, of which only one is insurance: ie travel insurance, which is a relatively simple product in terms of contractual variations.
- Only two products were selected for behavioural experiments: current accounts and personal loans; products that are likely much more easily comparable than insurance. Insurance Europe therefore cautions against too readily drawing conclusions from the study that are extrapolated to “all types of retail financial products” including insurance — especially for more multifaceted or individualised insurance products.
- In the coverage of the IDD in respect of travel insurance (pp78-80 of the annex to the study), there appear to be some oversights. Information about conflicts of interest and transparency of remuneration is missing. For instance, whether the intermediary is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertaking, the nature of the remuneration received in relation to the insurance contract, and whether the intermediary works on the basis of a fee or commission.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.