Procedure file

Basic information

2022/0147(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)

Directive

Financial services contracts concluded at a distance


Procedure completed

Subject

2.50.03 Securities and financial markets, stock exchange, CIUTS, investments
2.50.04 Banks and credit
2.50.08 Financial services, financial reporting and auditing
4.60.06 Consumers' economic and legal interests

Key players

Committee responsible Rapporteur Appointed

IMCO Internal Market and Consumer Protection YON-COURTIN Stéphanie 08/07/2022

KOKALARI Arba

LEITÃO-MARQUES Maria-Manuel

GRUFFAT Claude

BASSO Alessandra

JURZYCA Eugen

KONENÁ Kateina

European Parliament

Committee for opinion Rapporteur for opinion Appointed
The committee decided not to give an opinion.
Legal basis
Rules of Procedure EP 57; Treaty on the Functioning of the EU TFEU 114

Other legal basis
Rules of Procedure EP 159

Mandatory consultation of other institutions
European Economic and Social Committee

Stage reached in procedure
Procedure completed

Committee dossier
IMCO/9/09058

Documentation gateway

Legislative proposal
COM(2022)0204 11/05/2022 EC
Document attached to the procedure
SEC(2022)0203 12/05/2022 EC
Document attached to the procedure
SWD(2022)0141 12/05/2022 EC
Document attached to the procedure
SWD(2022)0142 12/05/2022 EC
Economic and Social Committee: opinion, report
CES2933/2022 21/09/2022 ESC
Committee draft report
PE738.712 21/11/2022 EP
Amendments tabled in committee
PE740.643 18/01/2023 EP
Committee opinion
ECON PE736.617 25/01/2023 EP
Committee report tabled for plenary, 1st reading/single reading
A9-0097/2023 30/03/2023 EP
Coreper letter confirming interinstitutional agreement
GEDA/A/(2023)004000 21/06/2023 CSL
Text agreed during interinstitutional negotiations
PE750.091 21/06/2023 EP
Text adopted by Parliament, 1st reading/single reading
T9-0354/2023 05/10/2023 EP
Draft final act
00037/2023/LEX 22/11/2023 CSL
Commission response to text adopted in plenary
SP(2023)557 19/12/2023 EC

Final act
Directive 2023/2673
OJ L 000 28.11.2023, p. 0000

Financial services contracts concluded at a distance

PURPOSE: to promote the provision of financial services within the internal market while ensuring a high level of consumer protection.


ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.


Directive 2002/65/EC has been subject to various reviews. Those reviews have revealed that the progressive introduction of product-specific EU legislation has led to significant overlaps with Directive 2002/65/EC and that digitalisation has exacerbated certain aspects which are not fully addressed by that Directive, in particular how and when information should be provided to the consumer.

It is therefore necessary to revise the rules applicable to distance contracts for financial services concluded between a trader and a consumer, while ensuring the application of the safety net feature which guarantees consumers a certain level of protection for contracts concluded at a distance, even in the case of financial products which are not yet subject to EU legislation.

CONTENT: the proposal aims to simplify and modernise the legislative framework by repealing the existing Directive 2002/65/EC concerning the distance marketing of financial services while including the relevant aspects of consumer rights concerning financial services contracts concluded at a distance within the scope of the horizontally
The proposal aims to end the general exclusion of financial services from Directive 2011/83/EU by extending its scope to financial services concluded at a distance. Specifically, the proposal aims to:

- **ensure full harmonisation of the rules on consumer financial services concluded at a distance.** This means that the rules will be similar for all financial service providers and the same rights will be guaranteed to consumers in all EU Member States;

- **establish rules on what pre-contractual information** should be provided, how and when, making the rules fit for the digital age. In practical terms, the rules are modernised in the sense that some detailed information not mentioned in Directive 2002/65/EC, such as the provision of the e-mail address by the financial service provider, has been added. The proposal also regulates the way in which information must be provided in relation to electronic communication. It lays down rules on the timing of the provision of information so that consumers have sufficient time to understand the pre-contractual information received and to be able to assimilate it before actually concluding the contract;

- **facilitate the exercise of the right of withdrawal,** where financial services contracts are concluded electronically, by means of a withdrawal button and ensure that consumers who have had less than one day to digest the pre-contractual information receive a reminder about their right of withdrawal after the conclusion of the contract;

- **guarantee online fairness:** the proposal sets out special rules to protect consumers when concluding contracts for financial services by electronic means. First, it establishes rules concerning adequate explanations that take place at a distance, including via online tools (e.g. roboadvice or chat boxes). The rules establish the information requirements that the trader is to provide the consumer with and the possibility for the consumer, if online tools are used, to request human intervention. The proposal prohibits traders from setting up their online interfaces in a way which can distort or impair the consumer's ability to make a free, autonomous and informed decision or choice;

- **strengthen rules on the enforcement with regard to the provision of financial services:** the proposal extends the rules on enforcement and penalties currently applicable in Directive 2011/83/EU on consumer rights to financial services contracts concluded at a distance, including the amendments introduced by the better enforcement and modernisation Directive (EU) 2019/2161 concerning penalties in the case of cross-border widespread infringements.

According to the Commission, the preferred option would also have a positive effect on the reduction of consumer detriment (at least EUR 170-210 million) and on consumer trust. It would entail some costs for financial service providers (at least around EUR 19 million) and public authorities (at least around EUR 6 million).

**Financial services contracts concluded at a distance**


The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

**Enhanced consumer protection**

Before the consumer is bound by a distance contract, or any corresponding offer, the trader should provide the information in good time before the consumer is bound by any distance contract. Members called for additional consumer protection regarding financial services contracts concluded online. They proposed that Member States should adopt measures requiring that traders, when concluding financial services contracts at a distance, do not design, organise or operate their online interfaces in a way that deceives or manipulates the consumer or in a way that otherwise materially distorts or impairs the ability of the consumer to make a free and informed decision. Measures should be put in place to ensure clear and responsible advertising of financial services products to prevent consumers from being deceived, which may include measures to ensure that any person or company advertising a financial service product on social media platforms, is obliged to prominently label whether he or she is competent...
do to so, has the appropriate knowledge and competence to communicate on the financial services offered in compliance with applicable regulations and that it is clearly mentioned if there is any remuneration for this advertising.

**Online requirements**

Member States should ensure that, in case the trader uses online tools, the consumer should have a right to request and obtain human intervention when concluding a distance contract.

The report stressed that for distance contracts concluded by means of an online interface, the trader should ensure that the consumer can exercise his or her right to withdraw from the contract by using a withdrawal function. In order to facilitate the exercise by the consumer of his or her right to withdraw from the contract, the withdrawal function should be labelled in a legible manner, for example containing the words withdraw from contract or a corresponding wording, be placed on the online interface in a prominent manner and be easily accessible to the consumer. When using the withdrawal function, the consumer should be allowed to complete and submit by electronic means a withdrawal statement with the following information: (a) the name of the consumer; (b) the identification of the contract; (c) the details of the electronic means by which the confirmation of the withdrawal is to be sent to the consumer.

**Financial services contracts concluded at a distance**


The text simplifies existing legislation, increases consumer protection, and creates a level playing field for financial services concluded online, via telephone or through other forms of remote marketing.

The Commission proposal, presented on 11 May 2022, repeals the 2002 directive, and introduces new provisions for financial services contracts concluded at a distance as an additional chapter of the consumer rights directive (CRD) which protect consumers in all kinds of commercial practices. It simplifies the legislative framework and certain articles of the CRD will also apply to financial services sold at a distance.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission proposal as follows:

**Consumer information**

The amended text improves the rules on information disclosure and aims to modernise pre-contractual information obligations and keeps the possibility for member states to impose stricter national rules in this area.

In good time before the consumer is bound by a distance contract, or any corresponding offer, the trader should provide the consumer, in a clear and comprehensible manner, with the following information:

- the identity and the main business of the trader and, where applicable, the identity and the main business of the trader on whose behalf he is acting;

- relevant contact details enabling the consumer to address any complaints to the trader;

- a description of the main characteristics of the financial service;

- the total price to be paid by the consumer to the trader for the financial service, including, information on the consequences of late or missed payments;

- practical instructions and procedures for exercising the right of withdrawal;

- the existence of guarantee funds or other compensation arrangements.

In the case of voice telephony communications, the identity of the trader and the commercial purpose of the call initiated by the trader should be made explicitly clear at the beginning of any call with the consumer. When a call is
being recorded, or might be recorded, the trader should also notify the consumer that this is the case.

**Right of withdrawal**

The Directive facilitates the exercise of the right of withdrawal from distance contracts by including, on the service provider's interface, a **withdrawal function** which is easily readable and accessible to the consumer.

The withdrawal function must enable the consumer to send an **online withdrawal statement** in which he informs the trader of his decision to withdraw from the contract. This online declaration should enable the consumer to provide or confirm easily the following information: (a) his name; (b) details identifying the contract from which he wishes to withdraw; (c) details of the electronic means by which confirmation of withdrawal will be sent to the consumer.

Once the consumer activates the confirmation function, the trader should send to the consumer an **acknowledgement of receipt** of the withdrawal on a durable medium, including its content and the date and time of its submission, without undue delay. The consumer should be considered to have exercised his or her right of withdrawal within the relevant withdrawal period if he or she submitted the online withdrawal statement before that period expired.

**Adequate explanations**

Traders are required to provide adequate explanations to the consumer concerning 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. Such explanations should be provided to the consumer free of charge and prior to the conclusion of the contract.

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 fully automated online tools such as chatbots, roboadvice, interactive tools or similar means. 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, at the pre-contractual phase, be able to obtain human intervention on behalf of the trader, free of charge, during business hours of the trader. The consumer should also have the right, in justified cases and without undue burden for the trader, to request **human intervention** after the distance contract has been concluded.

**Additional protection regarding online interfaces**

Traders must not design, organise or operate their online interfaces in such a way as to **mislead or manipulate the consumers** for whom their service is intended or in such a way as to impair or substantially hinder their ability to make free and informed decisions. In particular, Member States should adopt measures that, in accordance with Union law, address at least one of the following practices by traders:

- giving more prominence to certain choices when asking the consumers who are recipients of their service for a decision;
- repeatedly requesting that consumers who are recipients of the service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience; or
- making the procedure for terminating a service more difficult than subscribing to it.

Member States may adopt or maintain more stringent provisions regarding the requirements for traders, when the provisions are in conformity with Union law.

By 31 July 2030, the Commission should submit a report on the application of this Directive, including the withdrawal function, to the European Parliament and to the Council. That report should include an evaluation of the functioning of the single market for financial services concluded at a distance in the Union and the impact of this Directive on other relevant Union law.

**Financial services contracts concluded at a distance**

PURPOSE: make it safer to conclude financial services contracts online or by telephone.

2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC.

CONTENT: with the development of IT technologies, an increasing number of financial services such as credit, insurance, investments or pension plans are promoted online, and the contracts for these services are concluded at a distance. The growing number of distance financial services, in particular during the COVID-19 pandemic, required updating the existing EU legislation in this field.

This Directive repeals the 2002 directive and introduces new provisions for financial services contracts concluded at a distance as an additional chapter of the consumer rights directive (CRD) which protect consumers in all kinds of commercial practices. It simplifies the legislative framework and certain articles of the CRD will also apply to financial services sold at a distance.

The Directive therefore strengthens consumer protection and creates a level playing field for financial services concluded online, by telephone or via other forms of distance marketing.

The security net system

The application of Directive 2002/65/EC to consumer financial services that are not regulated by EU sectoral legislation has resulted in the application of a set of harmonised rules for the benefit of consumers and professionals. This so-called security net system helps to ensure a high level of consumer protection, while guaranteeing fair conditions of competition between professionals.

This Directive clarifies the scope of application and the safety net-feature in the Directive, in particular for financial services that are excluded from other sectoral legislation or only partially covered by it.

Pre-contractual information

The Directive improves the rules on information disclosure and aims to modernise pre-contractual information obligations and keeps the possibility for Member States to impose stricter national rules in this area.

When providing pre-contractual information through electronic means, such information will be presented in a clear and comprehensible manner. In that regard, the information could be highlighted, framed and contextualised effectively within the display screen.

When making use of the technique of layering pursuant to this Directive, the trader will provide, on the first layer of the electronic means, at least, the identity and the main business of the trader, the main characteristics of the financial service, the total price to be paid by the consumer, notice of the possibility that other taxes or costs might exist and the existence or absence of a right of withdrawal. The other remaining pre-contractual information requirements could be displayed in other layers.

Right of withdrawal

The Directive facilitates the exercise of the right of withdrawal from distance contracts by including, on the service provider's interface, a withdrawal function which is easily readable and accessible to the consumer. The withdrawal function must enable the consumer to send an online withdrawal statement in which he informs the trader of his decision to withdraw from the contract. Once the consumer activates the confirmation function, the trader should send to the consumer an acknowledgement of receipt of the withdrawal on a durable medium, including its content and the date and time of its submission, without undue delay.

The objective of this withdrawal function is to raise consumers awareness of their rights of withdrawal and ensure that to withdraw from a contract is not more burdensome than to enter it. The withdrawal function is applied to all contracts concluded at a distance, not only financial services contracts.

Adequate explanations

Traders are required to provide adequate explanations to the consumer concerning 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. Such explanations should be provided to the consumer free of charge and prior to the conclusion of the contract.

Where the trader uses online tools, such as robo-advice or chatbots, the consumer will have the right to request
**human intervention**, in order to better understand the effects of the contract on his or her financial situation.

### Additional protection against dark patterns

The new text introduces additional protection for consumers from dark patterns. Member States will have to take measures to limit the use of dark pattern marketing techniques to influence consumers choices.

The Directive adds further provisions from the CRD to financial services contracts concluded at a distance. These include provisions on inertia selling (the sending of unsolicited goods or services to potential customers to make a sale).

**ENTRY INTO FORCE:** 18.12.2023.

**TRANSPOSITION:** 19.12.2025.

**APPLICATION:** from 19.6.2026.

### Transparency

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