Financial services contracts concluded at a distance

2022/0147(COD) - 11/05/2022 - Legislative proposal

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

PROPOSED ACT: Directive of the European Parliament and of the Council.

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

BACKGROUND: Directive 2002/65/EC of the European Parliament and of the Council lays down EU-wide rules on the distance marketing of consumer financial services. At the same time, Directive 2011/83/EU of the European Parliament and of the Council establishes, inter alia, rules for distance contracts for the sale of goods and services concluded between a trader and a consumer.

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 applicable Consumer Rights Directive 2011/83/EU.

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 consumers' ability to make a free, autonomous and informed decision or choice;

- **strengthen the 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).