Financial services contracts concluded at a distance

2022/0147(COD) - 05/10/2023 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 548 votes to 4, with 14 abstentions, a legislative resolution on the 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.

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