Financial services contracts concluded at a distance

2022/0147(COD) - 28/11/2023 - Final act

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

LEGISLATIVE ACT: Directive (EU) 2023/2673 of the European Parliament and of the Council amending Directive 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 consumer's 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.