



Council of the  
European Union

Brussels, 24 February 2023  
(OR. en, fr)

---

---

**Interinstitutional File:  
2022/0147(COD)**

---

---

**6363/23  
ADD 1**

**CONSOM 42  
MI 107  
COMPET 105  
EF 46  
ECOFIN 140  
DIGIT 22  
CODEC 180  
CYBER 31**

**NOTE**

---

From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	6065/23
No. Cion doc.:	9053/22 + ADD1-4
Subject:	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 <i>General Approach</i> - Statements

---

Delegations will find attached statements by Italy and Luxembourg on the above-mentioned subject in view of the (Competitiveness) Council meeting on 2 March 2023. The statements will be entered into the minutes of the Council meeting.

**STATEMENT BY ITALY**

**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**

Italy believes that there are still some aspects of the proposal that need to be clarified in order to avoid application uncertainties.

The main concern for Italy relates to the proper application of the **principle of *lex specialis*/subsidiarity**.

In Italy's view, **whenever a EU sectoral legal act regulates a specific financial service, the sectoral discipline should in any case prevail on DMFSD2**, for the sake of clarity and legal certainty. Indeed, the European legislator, when issuing sectoral legislation, evaluates in detail how to regulate the matter depending on the specific characteristics of the market and of the regulated product.

If the DMFSD2 were to apply to products/services already regulated by sectoral legislation, this would undermine the choices already made by the legislator in each sector. For example, applying the right of withdrawal provided by DMFSD2 even where sectoral legislation exists but does not provide for it, such as in the Directive on payment services in the internal market (PSD2), could be complex or even incompatible with the nature of the service provided, and **may lead to serious legal uncertainty and litigation in courts**.

In addition, Italy sees potential issues in a loose definition of “financial services”. In general, **we would prefer “financial services” to be regulated in the DMFSD2 only to the extent that they are already qualified as such by a national or an EU piece of legislation.** Otherwise, legal uncertainty would be high, since divergent interpretations on “financial services” would be admitted, and sectoral national authorities could be held accountable for failing to supervise services whose nature is uncertain ex ante.

Moreover, **Italy do not support the deletion of the possibility for MS to maintain or adopt more stringent provisions on adequate explanations** to the consumer on the proposed financial services contracts. Without this possibility, the existing more stringent national rules in this matter should be repealed and this would imply a reduction of consumer protection, which we cannot support.

Italy therefore hopes that all these aspects of the Directive could be improved during the trialogue negotiations.

Statement to be entered in the Council minutes

Competitiveness Council meeting on 2 March 2023

Statement by Luxembourg

Proposal for a Directive concerning financial services contracts concluded at a distance

Notwithstanding its support for the adoption of the general approach, Luxembourg wishes to share its concerns regarding some key aspects of the proposal which have been altered during the discussions.

While Luxembourg fully supports the aim of this legislation, which is to complete the single market for cross-border financial services contracts concluded at a distance by harmonising certain consumer protection rules, it is of the opinion that the Council mandate does not allow that aim to be achieved.

Luxembourg regrets the fact that, despite the harmonisation, key provisions allow Member States to introduce *new* barriers in the single market. This makes cross-border transactions more difficult, and keeps consumers in a situation where they continue to face legal fragmentation across the EU.

The text as it stands:

- does not provide legal certainty and legal clarity at EU level, meaning that businesses potentially have to analyse and apply 27 different sets of national legislation when concluding contracts with consumers;
- does not provide legal certainty at national level, as the relationship between the proposed text and existing legislation in this sector is unclear.

Luxembourg hopes that the text can be improved further in the next stages of the legislative process.