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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Directive on financial services contracts concluded at a distance - Comments and questions from FI



13 July 2022

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

General remarks

Finland thanks the Commission and the Czech Presidency for the chance to comment on the Proposal. As the Proposal is undergoing parliamentary scrutiny, our remarks at this stage are preliminary and subject to change, pending parliamentary review.

Finland supports the goals set in the Proposal and wants to further a well-functioning internal market and a high level of consumer protection. However, we are unsure whether a high level of consumer protection is achieved through the Proposal in its current form. In our understanding, the proposed full harmonization regime prevents Member States from extending information requirements based on product-specific EU legislation on products which lay outside the scope of said legislation, e.g. consumer credit loans under EUR 200. In many instances, this would diminish the amount of information the consumer is to be provided with, weakening consumer protection.

For products and services within the scope of the Proposal for which no product-specific EU legislation exists, the Proposal would make it impossible to introduce or maintain information requirements based on national consideration. This could severely hamper efforts to protect consumers, bearing in mind the market differences between Member States.

In addition, the idea that the provisions of the Consumer Rights Directive pertaining to distance marketing of financial services would not at all apply to products covered by product-specific EU legislation is a problematic one, as the existing product-specific legislation is built on the assumption that there is a separate horizontal safety net (DMFSD) in the background. To remove the subsidiary applicability of horizontal legislation concerning distance marketing of financial services could be detrimental to consumer protection.

In order to gain a better overall view of the changes the Proposal would bring about, we request the Commission to draft a correlation table between the Proposal and Union acts concerning financial services. The table should preferably cover all provisions on the right to information and right of withdrawal in these acts, highlighting their eventual gaps compared to the Proposal. Such a table would be very helpful in identifying the effects of full harmonization in accordance with Article 4.

For our detailed comments, please see below.

Article 1 (Amendments to Directive 2011/83/EU)

At the meeting on 30th June, the Czech Presidency requested Member States to list national provisions on consumer protection adversely affected by the Proposal. In Finland, these include at least the following:

Consumer Credit Directive: loans below EUR 200 and above EUR 75 000 are excluded from the scope of the CCD, but we have nationally extended the scope of CCD-based provisions on right to information and right of withdrawal to cover consumer credit loans regardless of sum. Full harmonization would prevent us from requiring the creditor to provide the consumer with full price information (e.g. APR) as outlined in the CCD. To restrict the amount of information the consumer is to be provided with would weaken consumer protection. It could also be problematic for traders to provide consumers with different data sheets depending on whether the agreement in question is within the scope of the CCD or not.

Likewise, if the Proposal takes precedence over the nationally extended scope of the right of withdrawal, we would be obliged to maintain two sets of withdrawal rules for consumer credit loans, depending on the size of the loan. This would be rather impractical and difficult to justify.

Peer-to-peer lending: In Finland, peer-to-peer lending facilitated by an intermediary platform is within the scope of provisions through which the CCD is transposed. However, it is unclear whether such peer-to-peer lending is within the scope of the CCD, as both the borrower and the lender are consumers. If peer-to-peer lending falls outside the scope of the CCD, only the information requirements proposed here would seem to apply to them. As these requirements are not as extensive as CCD requirements, this would create an unwelcome discrepancy in consumer protection.

Guaranties and third-party pledges: According to established Finnish interpretation, guaranties and third-party pledges are financial services covered by the DMFSD and consequently, by the Proposal. They are widely used in Finland as collaterals for consumer credit loans and regulated in a separate national Act which is not based on Union law, as there are no product-specific Union acts on these agreements. The Act includes detailed provisions on the information with which private guarantors and pledgers are to be provided. Full harmonization would render it impossible to maintain such information requirements based on national consideration. However, considering the financial importance of guaranties and pledges to consumers, it is essential that their right to information is not restricted by the Proposal.

We suggest adding Article 8 (6) to the list of Articles which are applied to contracts on financial services concluded at a distance. From a consumer protection viewpoint, it is important to allow Member States the option to require a confirmation in accordance with 8 (6).

Article 15 (effects of the right of withdrawal on ancillary contracts) is not among the Articles which would apply to financial service contracts concluded at a distance. Preliminarily, we consider it logical to treat ancillary contracts in the same way regardless of their subject matter and apply Article 15 to distance contracts on financial services as well.

Finland preliminarily considers it would be more practical and effective to apply Article 21 to financial services contracts regardless of whether they are provided at a distance or not. Is there a specific reason not to do so?

Article 16a (Information requirements for distance contracts for consumer financial services)

Paragraph 3

Finland does not support the proposed deadline for the delivery of information to the consumer. In effect, the suggested model enables traders to replace the timely delivery of information with a reminder of withdrawal. This would not improve consumer protection, as the existence or absence of the right of withdrawal is already included in the pre-contractual information. It would also increase the administrative burden of traders without any added value.

A similar provision was included in the Commission's proposal for CCD, but it was not accepted by the Council. We should follow the general approach adopted for CCD in this regard.

Finland stresses the responsibility of the trader to actively provide the consumer with the required information instead of merely making it 'available', as currently proposed. This has been a priority for the Finnish Competition and Consumer Authority.

Paragraph 4

Finland notes that the proposed Article does not include provision according to which the information shall be provided in a way appropriate to the means of distance communication used. We would welcome an elaboration on why such a provision is not included in the Proposal (compare Article 3(2) of the current Directive).

In Finland, the Web Accessibility Directive (Directive (EU) 2016/2102) was transposed with an Act covering, in addition to public sector bodies, a number of private sector actors, including financial services providers. The suggested full harmonization regime could prevent us from maintaining this regulation. A further national examination on the possible effects this might have on consumers with disabilities will be carried out.

It could be problematic to allow the consumer the option of not reviewing all the information required, even if it often is unlikely that the consumer spends much time analysing the information. Any layering techniques should secure that the consumer actually sees all the required information before the contract is concluded.

Paragraph 6

As per Art. 22 of the IDD, Member States may maintain or adopt stricter information requirements than the ones set in the IDD. As product-specific legislation takes precedence over Article 16 a, does this mean that the flexibility clause provided in Art. 22 (2) of the IDD also applies to insurance contracts concluded at a distance?

Pension products are not considered insurance –based investment products according to Art. 2, paragraph 1, point 17 of the IDD. Nevertheless, the information requirements for insurance-based investment products are nationally applied to pension products in Finland. For the sake of clarity and consumer protection, we are keen to maintain things the way they are. Would it be possible in light of the proposal?

Article 16b (Right of withdrawal from distance contracts for financial services)

Paragraph 5

While we are preliminarily open to the introduction of a withdrawal button, we welcome further discussion on whether a similarly high level of consumer protection could be attained with another instrument, considering the administrative burden the button could cause traders. Additionally, the relationship between the Proposal and product-specific Union acts should be further examined even here. It is somewhat unclear whether the provisions on withdrawal button are applied when a product-specific EU act includes provisions on the right of withdrawal. Moreover, the withdrawal button should not narrow the possibility of the consumer to withdraw from the contract using other channels.

Article 16e (Additional protection regarding online interfaces)

Is this Article meant as a reference to 'dark patterns'? If this is the case, are there plans to elaborate on features or practices which are in breach of this Article?

Article 2 (Transposition)

Finland deems it important to provide traders with a six-month transition period for the necessary adjustments to their data systems and internal procedures.