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NOTE

From:	General Secretariat of the Council
To:	Working Party on Consumer Protection and Information (Consumer Credits) Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
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 - European Parliament's position

Delegations will find attached the European Parliament's position on the above-mentioned proposal, which was voted in the IMCO Committee on 28.03.2023. Please note that the text is still subject to structural changes and finalisation but the content should remain the same.

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20.3.2023

COMPROMISE AMENDMENTS

1 - 6

Arba Kokalari

Amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC

Proposal for a directive
(COM(2022)0204 – C9-0175/2022 – 2022/0147(COD))

Final CA 1 - Article 1(1) of the amending Directive

Compromise amendment replacing all relevant amendments, including AMs 11, 12, 89, 90, 91, 92, 93, and 94.

Article 1

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) the following paragraph (1b) is inserted:

‘(1b) **Only** Article 1, **Article 2(1)-(7) and (9)-(21)**, Article 3(2), (5) and (6), Article 4, **Article 6a, Article 8(6)**, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1), (2), (3) and (4) and Articles 25, 26 **and 27** shall apply to distance contracts concluded between a trader and a consumer for the supply of financial services.

Where contracts referred to in the first subparagraph comprise an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions referred to in the first subparagraph shall apply only to the initial agreement.

Where there is no initial service agreement but the successive operations or the separate operations of the same nature are performed over time between the same contractual parties, Articles 16a and 16d shall only apply to the performance of the first operation. ~~when the first operation is performed.~~

*Where, however, no operation of the same nature is performed for more than one year, the next operation shall be deemed to be the first in a new series of operations and, accordingly, Articles 16a and 16d shall apply **thereto**.*

(b) in paragraph 3, point (d) is replaced by the following:

‘(d) for financial services, not covered by Article 3(1b).’

Final CA 2 - Article 16a

Compromise amendment replacing all relevant amendments, including AMs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, and 153.

(2) The following Chapter is inserted:

‘CHAPTER IIIa

RULES CONCERNING FINANCIAL SERVICES CONTRACTS CONCLUDED AT A DISTANCE

Article 16a

Information requirements for distance contracts for consumer financial services

1. ***Member States shall ensure that*** before the consumer is bound by a distance contract, or any corresponding offer, the trader ***provides*** the consumer with the following information, in a clear and comprehensible manner:
- (a) the identity and the main business of the trader;
 - (b) the geographical address at which the trader is established as well as the trader's telephone number and email address ***or other means of safe electronic communication***; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the identity ***and relevant information about*** the trader, ***such as the geographical address, telephone number and email address***, on whose behalf he ***or she*** is acting;
 - (c) if different from the address provided in accordance with point (b), the geographical address of the place of business of the trader, and ***the relevant contact details*** where the consumer can address any complaints ***to the trader, and where applicable, to the trader on whose behalf he or she is acting***;
 - (d) where the trader is registered in a trade or similar public register, the trade register in which the trader is entered and the registration number or an equivalent means of identification in that register;
 - (e) where the trader's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
 - (f) a description of the main characteristics of the financial service;
 - (g) the total price to be paid by the consumer to the trader for the financial service, including all related fees, charges and expenses, and all taxes paid via the trader or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;
 - (ga) ***where applicable, information on the consequences of non-compliance with the financial services contract, such as late or missed payments***;
 - (h) where applicable, that the price was personalised on the basis of automated decision-making;
 - (i) where relevant notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the trader's control and that historical performances are no indicators for future performances;
 - (j) notice of the possibility that other taxes and/or costs may exist that are not paid via the trader or imposed by him;
 - (k) any limitations of the period for which the information provided is valid;
 - (l) the arrangements for payment and for performance;
 - (m) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged;
 - (n) where applicable, a brief description of the risk-reward profile;

- (o) information on any environmental or social objectives targeted by the financial service, *where environmental or social factors are integrated into the investment strategy of the financial service*;
- (p) the existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it including information on the *fees* which the consumer may be required to pay, as well as the consequences of non-exercise of that right;
- (q) the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;
- (r) information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed by the contract in such cases;
- (s) practical instructions for exercising the right of withdrawal indicating, *inter alia*, the address, email address *or other electronic means of communications* to which the notification of a withdrawal should be sent **and information about the existence and placement of the withdrawal function, referred to in Article 11a**;
- (t) any contractual clause on law applicable to the distance contract and/or on competent court;
- (u) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this Article are supplied, and furthermore in which language, or languages, the trader, with the agreement of the consumer, undertakes to communicate during the duration of this distance contract;
- (v) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.
- (va) *where applicable, the existence of guarantee funds or other compensation arrangements*;

The trader shall provide the information referred to in this paragraph in good time before the consumer is bound by any distance contract.

2. In the case of telephone communications *or other distance communication techniques initiated by the trader*, the identity of the trader and the commercial purpose of the call *or communication* shall be made explicitly clear at the beginning of any *communication* with the consumer. ***In the case of telephone communication and by way of derogation from paragraph 1, if the consumer explicitly agrees to continue the telephone communication, only the information referred to in points (a), (f), (g), (ga), (j), and (p) of that paragraph, and, where applicable, information that the financial service is related to instruments involving risks, needs to be provided by the trader before the consumer is bound by the distance contract. The remaining information referred to in paragraph 1 shall be provided immediately after the conclusion of the contract when fulfilling the obligations under paragraph 3 and on a durable medium. The trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1.***
3. When the information referred to in paragraph 1 is provided less than one day before the consumer is bound by the distance contract, Member States shall require that the trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the distance contract and of the procedure to follow for withdrawing, in accordance

with Article 16b. That reminder shall be provided to the consumer ***between one and seven days*** at the latest, after the conclusion of the distance contract.

4. The information referred to in paragraph 1 shall be ***provided*** to the consumer on a durable medium and laid out in a way that is easy to read, using characters of readable size.

Except for the information referred to in paragraph 1, points (a), (f), (g), ***(ga), (n)*** and (p), the trader shall be permitted to layer the information where it is provided by electronic means.

In case the trader decides to layer the information, it shall be possible to print the information referred to in paragraph 1 as one single document.

Where colours are used to provide the information referred to in paragraph 1, they shall not diminish the comprehensibility of the information if the key information document is printed or photocopied in black and white.

The information referred to in paragraph 1 shall be made available upon request in an appropriate ***and accessible*** format to consumers with ***disabilities, including consumers with*** a visual impairment ***in line with Directive (EU) 2019/882***.

5. As regards compliance with the information requirements laid down in this Article, the burden of proof shall be on the trader.
6. Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, only the pre-contractual information requirements of that Union act shall apply to those specific financial services, unless provided otherwise in that act. ***In that case, this Article shall not apply.***
- 6 a. ***The rules concerning consumer financial services concluded at a distance shall not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.***

Final CA 3 - Article 11a, Article 16b and Article 16c
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Compromise amendment replacing all relevant amendments, including AMs 23, 24, 25, 26, 27, 28, 29, 95, 96, 97, 98, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, and 181.

Article 11a

Exercise of the right of withdrawal from distance contracts concluded by means of an online interface

1. For distance contracts concluded by means of an online interface, the trader shall ensure that the consumer can exercise ~~their~~ his or her right of to withdraw~~al~~ from the contract by using a withdrawal function ~~or a similar means~~.

In order to facilitate the exercise by the consumer of his or her right to withdraw from the contract, the withdrawal function ~~or a similar means~~ shall be labelled in a legible manner, for example containing the words “withdraw from contract” or a corresponding wording, be placed on the online interface in a prominent manner and be easily accessible to the consumer. ~~in order to facilitate the consumer’s exercise of the right of withdrawal.~~

5a. When using the withdrawal function ~~or a similar means~~, the consumer shall be allowed to complete and submit ~~a withdrawal statement~~ by electronic means ~~a withdrawal statement with~~

by providing the following information:

- (a) the name of the consumer;
- (b) the identification of the contract;
- (c) the details of the electronic means by which the confirmation of the withdrawal shall be sent to the consumer.

5b. The procedure of submitting a withdrawal statement by electronic means shall be labelled in a legible manner and be permanently available during the entire withdrawal period. Once the consumer submits the withdrawal statement, the trader shall, without undue delay and on a durable medium, provide the consumer with ~~on a durable medium~~, a confirmation of the submission of ~~that~~ the withdrawal statement, ~~has been submitted~~, including its contents and the date and time of ~~the~~ its submission. The trader shall confirm the withdrawal to the consumer or indicate whether there are further requirements to complete the withdrawal process.

Article 16b

Right of withdrawal from distance contracts for financial services

1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from a contract without penalty and without giving any reason. ***This period shall be extended to 30 calendar days in distance contracts relating to personal pension operations.***

The period for withdrawal referred to in the first subparagraph shall begin from one of the following days:

- (a) the day of the conclusion of the distance contract,
- (b) the day on which the consumer receives the contractual terms and conditions and the information in accordance with Article 16a, if that is later than the date in point (a) of this subparagraph.

If the consumer has not received the contractual terms and conditions or the information in accordance with Article 16a, the withdrawal period shall in any case expire 12 months and 14 days after the conclusion of the distance contract.

This shall not apply if the consumer has not been informed at all about their right of withdrawal in accordance with Article 16(a) point (p).

The period of withdrawal shall in any case lapse where both parties completely fulfilled the contract in accordance with paragraph 2(c) of this Article.

2. The right of withdrawal shall not apply to the following:
 - (a) consumer financial services whose price depends on fluctuations in the financial market outside the traders control, which may occur during the withdrawal period, such as services related to:
 - foreign exchange;
 - money market instruments; transferable securities;
 - units in collective investment undertakings;
 - financial-futures contracts, including equivalent cash-settled instruments;
 - forward interest-rate agreements (FRAs);
 - interest-rate, currency and equity swaps;

- options to acquire or dispose of any instruments referred to in this point including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
 - (b) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;
 - (c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.
3. The consumer shall ~~have~~ exercised his or her right of withdrawal within the withdrawal period referred to in paragraph 1 if the communication concerning the exercise of the right of withdrawal is sent or the withdrawal ~~function button~~ referred to in ~~Article 11a~~ ~~paragraph 5~~ is activated by the consumer before that period has expired.
- 3a. ***Where an ancillary service relating to the distance contract for financial service is provided by the trader or by the third party on the basis of an agreement between that third party and the trader, this ancillary contract shall be automatically terminated, without any costs for the consumer, if the consumer exercises his right of withdrawal in accordance with this Article.***
4. This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.
5. Where another Union act governing specific financial services contains rules on the right of withdrawal, only the right of withdrawal rules of that Union act shall apply to those specific financial services, unless provided otherwise in that act, ***and paragraphs 1 to 4 of this Article shall not apply.***

Article 16c

Payment of the service provided before withdrawal

1. Where the consumer exercises the right of withdrawal under Article 16b, the consumer may only be required to pay, without any undue delay, for the service actually provided by the trader in accordance with the distance contract. The amount payable shall not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the distance contract;
 - (b) in any case be such that it could be construed as a penalty.
2. The trader may not require the consumer to pay any amount on the basis of paragraph 1 of this Article unless the trader can prove that the consumer was duly informed about the amount payable, in conformity with Article 16a(1), point (p). However, in no case may the trader require such payment if the trader has commenced the performance of the contract before the expiry of the withdrawal period provided for in Article 16b(1) without the consumer's prior request.
3. The trader shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums the trader has received from him in accordance with the distance contract, except for the amount referred to in paragraph 1. This period shall begin from the day on which the trader receives the notification of withdrawal.
4. The consumer shall return to the trader any sums he or she has received from the trader without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer withdraws from the contract.

Compromise amendment replacing all relevant amendments, including AMs 30, 31, 32, 33, 88, 182, 183, 184, 185, 186, 187, 188, 189, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201 and 202.

Article 16d

Adequate explanations

1. Member States shall ensure that traders are required to provide adequate explanations to the consumer on 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. The ***provision of such information shall be provided free of charge for consumers and shall be provided in good time before the conclusion of the contract. The*** explanations shall, ***as a minimum***, include the following elements:
 - (a) the required pre-contractual information;
 - (b) the essential characteristics of the proposed contract, including the possible ancillary services;
 - (c) the specific effects that the proposed contract may have on the consumer, including the consequences of payment default or late payment by the consumer.
2. Paragraph 1 shall also apply to explanations provided to the consumer, when using online tools such as live chats, chat bots, roboadvice, interactive tools or similar approaches.
3. Member States shall ensure that, in case the trader uses online tools, the consumer shall have a right to request and obtain human intervention ***when concluding a distance contract, in the language used in the pre-contractual information provided according to Article 16(a)(1).***
- 3a. ***As regards compliance with this Article, the burden of proof shall be on the trader.***
4. Where another Union act governing specific financial services contains rules on the information to be provided to the consumer prior to the conclusion of the contract, paragraphs 1 to 3 of this Article shall not apply.

Article 16e

Additional protection regarding financial services contracts concluded online

Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council²⁴ and Council Directive 93/13/EEC²⁵, Member States shall adopt measures requiring that traders, when concluding financial services contracts at a distance, ***do not design, organise or operate their*** online interfaces ***as defined in Article 3(m) of Regulation (EU) 2022/2065*** in a way that ***deceives or manipulates the consumer or in a way that otherwise materially*** distorts or impairs ***the ability of the*** consumer to make a free and informed decision.

Those Measures shall inter alia include the obligation for traders to present different options to consumers in a neutral and non-misleading way.

~~Where applicable, and~~ Without prejudice to the obligations under Directive 2010/13/EU, Member States shall ~~also~~ adopt measures to tackle the risks associated with ~~marketing practices promoting influencer marketing to promote~~ financial services concluded at a distance. The measures shall ensure clear and responsible advertising of financial services products to prevent consumers from being deceived, which may include measures to ensure that any person or company advertising a financial service product on social media platforms, is obliged to prominently label whether he or she ~~is competent to do so~~ has the appropriate knowledge and competence to communicate on the financial services offered in compliance with applicable regulations and that it is clearly mentioned if there is any remuneration for this advertising.

Member States shall require that advertising concerning financial services to be concluded at a distance ~~shall~~ include a clear and prominent risk warning in cases where:

- (a) the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the supplier's control and
- (b) the financial service involves the consumer becoming indebted.

The risk warning concerning financial services falling under point (a) shall warn consumers that they can lose money, while the risk warning for financial services falling under point (b) shall warn consumers that borrowing costs money.

The Commission shall annually publish the list of national measures in force adopted by the Member States in relation to this Article, starting from [30 months from the adoption of this Directive].

Final CA 5 - Article 2, 3, 4 and 5 of the amending Directive

Compromise amendment replacing all relevant amendments, including AMs 206, 207, 208, 209, 210, and 211.

Article 2

Transposition and Review

1. Member States shall adopt and publish by [**18 months from adoption**] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
They shall apply those provisions from [*the date after 18 months from adoption*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive.
- 2a. **By 31 July 2035, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall include an**

evaluation of the functioning of the market for financial services concluded at the distance in the Union and the impact of this Directive in relation to other relevant Union law.

Article 3

Repeal

Directive 2002/65/EC is repealed with effect from [24 months from adoption].

References to the repealed Directive shall be construed as references to Directive 2011/83/EU, as amended by this Directive, and shall be read in accordance with the correlation table set out in the Annex to this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

Final CA 6 - Recitals

Compromise amendment replacing all relevant amendments, including AMs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 and 86.

- (1) Directive 2002/65/EC of the European Parliament and of the Council¹ lays down rules at Union level concerning the distance marketing of consumer financial services. At the same time Directive 2011/83/EU of the European Parliament and of the Council² lays down,

¹ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

² Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC (OJ L 304, 22.11.2011, p. 64).

amongst other, rules applicable to distance contracts for the sale of goods and provision of services concluded between a trader and a consumer.

- (2) Article 169(1) and Article 169(2), point (a), of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that Union policies are to ensure a high level of consumer protection.
- (3) Within the framework of the internal market, in order to safeguard freedom of choice, a high degree of consumer protection in the area of financial services contracts concluded at a distance is required in order to enhance *welfare and* consumer confidence in distance selling.
- (4) Ensuring the same high level of consumer protection across the internal market is best achieved through full harmonisation. Full harmonisation is necessary in order to ensure that all consumers in the Union enjoy a high and equivalent level of protection of their interests and to create a well-functioning internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive, with respect to aspects covered by the Directive, unless otherwise provided in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce *provisions in their* national legislation.
- (5) Directive 2002/65/EC has been the subject of different reviews. Those reviews revealed that the progressive introduction of Union product-specific legislation has led to significant overlaps with Directive 2002/65/EC and that digitalisation exacerbated some aspects that are not fully addressed by that Directive.
- (6) Digitalisation has contributed to market developments that were not foreseen at the time of the adoption of Directive 2002/65/EC. In fact, the rapid technological developments since then have brought significant changes to the financial services market. Although many sector specific acts have been adopted on the Union level, financial services offered to consumers have evolved and diversified considerably. New products have appeared, in particular in the online environment, and their use continues to develop, often in a fast and unpredicted manner. In this regard, the horizontal application of Directive 2002/65/EC remains relevant. The application of Directive 2002/65/EC to consumer financial services not regulated by sector specific Union legislation has meant that, a set of harmonised rules apply to the benefit of consumers and traders. This ‘safety net’ feature, contributes to ensuring a high level of consumer protection while ensuring a level playing field among traders.
- (7) In order to address the fact that the progressive introduction of Union sector specific legislation has led to significant overlaps of that legislation with Directive 2002/65/EC and that digitalisation exacerbated some aspects that are not fully addressed by the Directive, including how and when information should be provided to the consumer *and the means through which contracts can be concluded or the information asymmetry between providers and consumers*, it is necessary to revise the rules applicable to financial services contracts concluded between a consumer and a trader at a distance, while at the same time ensuring the application of the ‘safety net’ feature *for financial services which are not covered by Union sector specific legislation including financial services excluded from the scope of Union acts governing specific financial services*.
- (8) Directive 2011/83/EU, similarly to Directive 2002/65/EC, provides for a right to pre-contractual information and a right of withdrawal for certain consumer contracts concluded at a distance. This complementarity is, however, limited since Directive 2011/83/EU does not cover financial services contracts.

- (9) Extending the scope of Directive 2011/83/EU to cover financial services concluded at a distance should ensure the necessary complementarity. However, due to the particular nature of consumer financial services, in particular by reason of their complexity, not all the provisions of Directive 2011/83/EU should apply to consumer financial services contracts concluded at a distance. A dedicated chapter with rules applicable only to consumer financial services contracts concluded at a distance should ensure the necessary clarity and legal certainty.
- (10) While not all the provisions of Directive 2011/83/EU should apply to financial services contracts concluded at a distance due to the specific nature of those services, a number of provisions of Directive 2011/83/EU, such as relevant definitions, rules on additional payments, on enforcement, penalties, **ancillary contracts and inertia selling**, should also apply to financial services contracts concluded at a distance. The application of those provisions ensures complementarity between the different types of contracts concluded at a distance. The extension of the application of the rules on penalties of Directive 2011/83/EU will ensure that effective, proportionate and dissuasive fines are imposed on traders responsible for widespread infringements or widespread infringements with a Union dimension.
- (11) A dedicated chapter in Directive 2011/83/EU should contain **an updated version of** the still relevant and necessary rules of Directive 2002/65/EC, in particular concerning the right to pre-contractual information and the right to withdrawal, when financial service contracts are concluded at a distance.
- (12) Since distance financial services contracts are most commonly concluded by electronic means, rules on ensuring online fairness should ensure added transparency and provide the consumer with the **right** to request human intervention when he or she interacts with the trader through online interfaces, such as a chatbox, **roboadvice, interactive** or similar tools. The trader should be prohibited to deploy measures in his or her online interface that could distort or impair the **ability of the consumer** to make a free and informed decision or choice.
- (13) Certain consumer financial services are governed by specific Union acts, which continue to apply to those financial services. In order to ensure legal certainty, **and to ensure that there are no duplications or overlaps**, it should be clarified that where another Union act governing specific financial services contains rules on pre-contractual information or on the exercise of the right of withdrawal, only the respective provisions of those other Union acts should apply to those specific consumer financial services unless provided otherwise in those acts. **This Directive does not amend or modify an existing sectoral legislation.** For instance, when Article 186 of Directive 2009/138/EC of the European Parliament and of the Council³ applies, the rules concerning the 'cancellation period' laid down in Directive 2009/138/EC apply and not the rules on the right of withdrawal laid down in this Directive and when Article 14(6) of Directive 2014/17/EU of the European Parliament and of the Council⁴ applies, the rules on the right of withdrawal under this Directive should not apply. Likewise, certain Union acts governing specific financial services⁵ contain

³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁴ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

⁵ Such as, Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016,

extensive and developed rules designed to ensure that consumers are able to understand the essential characteristics of the proposed contract. Furthermore, certain Union acts governing specific financial services, such as Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property⁶, already lay down rules on adequate explanations to be provided by the traders to the consumers with respect to the proposed contract. In order to ensure legal certainty, the rules on adequate explanations set out in this Directive should not apply to financial services falling under Union acts governing specific financial services that contain rules on the information to be provided to the consumer prior to the conclusion of the contract. ***The sectoral provisions contained in those specific Union acts should prevail over the rules of this Directive even where those provisions are not identical to the ones contained in this Directive.***

- (14) Consumer financial services contracts negotiated at a distance involve the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the trader and the consumer. In order to tackle the constant development of those means of communication principles should be defined that are valid even for those means which are not yet in widespread use or which are not yet known.
- (15) A single financial service contract involving successive operations or separate operations of the same nature performed over time may be subject to different legal treatment in different Member States, but it is important that the rules are applied in the same way in all the Member States. To that end, it is appropriate to provide that the provisions governing the financial services contracts concluded at a distance should apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts. For example, an "initial service agreement" may be considered to be the opening of a bank account, and "operations" may be considered to be the deposit or withdrawal of funds to or from the bank account. Adding new elements to an initial service agreement does not constitute an "operation" but an additional contract.
- (16) In order to delimit the scope of application of this Directive, the rules concerning consumer financial services concluded at a distance should not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts, ***for example when contacting an existing consumer to amend or extend a contract by distance means.***
- (16a) ***Based on the principle of proportionality laid down in Article 5 TEU, this Directive should not be too burdensome for SMEs.***
- (17) The use of means of distance communications ***offers good opportunities to obtain information and*** should not lead to an unwarranted restriction on the information provided to the consumer. ***When using telephone communications, the consumer ~~shall~~ should have initiated the call or, when initiated by the trader, the consumer should explicitly have agreed to continue the telephone communication. The provider should apply specific pre-contractual information obligations before the consumer is bound by the contract.*** In the interests of transparency, requirements should be laid down with regard to when the information should be provided to the consumer prior to the conclusion of the

p. 19), Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214)

⁶ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34)

distance contract and how that information should reach the consumer. In order to be able to make their decisions in full knowledge of the facts, consumers should receive the information ~~at least one day~~ **in good time** prior to the conclusion of the distance contract. ***This is to ensure that the consumer has sufficient time to read and understand the pre-contractual information, compare offers and to make an informed decision.*** In case the information *is* provided less than a day before the conclusion of the distance contract for financial services should be obliged to remind the consumer, ***on a durable medium***, about the possibility to withdraw from the distance contract for financial service. ***That reminder shall should be provided to the consumer between one and seven days at the latest, after the conclusion of the distance contract.***

- (18) The information requirements should be modernised and ***made future-proof***. ***This Directive*** updates ***those*** to include, for example, the email address of the trader ***or other means of electronic communication*** and the information on the risk and reward related to certain consumer financial services. ***When personalising the price of an offer for specific consumers or specific categories of consumers for financial services to be concluded at a distance, the trader should clearly inform the consumer that the price presented to them is personalised on the basis of individual price sensitivity.***
- (19) When the consumer financial service concluded at a distance includes a risk-reward profile, it should contain such elements as a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the financial service and the possible maximum loss of capital, including information on whether all capital can be lost.
- (20) Certain financial services might ***integrate*** environmental or social ***factors into their investment strategy***. In order to be able to make an informed decision, the consumer should also be informed about the particular ***duly documented*** environmental or social objectives targeted by the financial service.
- (21) The information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens. In the case of mobile telephone screens, where the trader has customised the content and presentation of the online interface for such devices, the following information must be provided most prominently and in an upfront manner: information concerning the identity of the trader, the main characteristics of the consumer financial service, the total price to be paid by the consumer to the trader for the consumer financial service including all taxes paid via the trader or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it, and the existence or absence of the right of withdrawal, including the conditions, time limit and procedures for exercising that right. The rest of the information could be provided via additional pages. However, all the information should be provided on a durable medium before the conclusion of the distance contract.
- (22) When providing pre-contractual information through electronic means, such information should be presented in a clear and comprehensible manner. In this regard, the information could be highlighted, framed and contextualised effectively within the display screen. The technique of layering has been tested and proved to be useful for certain financial services; its uses, namely the possibility to present detailed parts of the information through pop-ups or through links to accompanying layers, should be encouraged. A possible manner of providing pre-contractual information is through the ‘tables of contents’ approach using expandable headings. At the top level, consumers could find the main topics, each of which can be expanded by clicking on it, so that the consumers are directed to a more detailed presentation of the relevant information. In this way, the consumer has all the required information in one place, while retaining control over what to review and when. ***On the***

other hand, overly lengthy and complex descriptions, small print, and extensive use of hyperlinks should be avoided as much as possible, as these are methods that worsen the understanding of consumers. Consumers should have the possibility to download all the pre-contractual information document and to save it as a stand-alone document.

- (23) Consumers should have a right of withdrawal without penalty and with no obligation to provide justification. When the right of withdrawal does not apply because the consumer has expressly requested the performance of a distance contract before the expiry of the withdrawal period, the trader should inform the consumer of this fact before the start of the performance of the contract.
- (24) In order to ensure the effective exercise of the right of withdrawal, the procedure for the exercise of that right should not be more burdensome than the procedure for the conclusion of the distance contract.
- (25) *Where the trader offers the possibility of concluding distance contracts by means of an online interface, such as through a web-site or application, the trader should provide additional safeguards to ~~facilitate~~ ensure that consumers can withdraw from a contract in a visible, simple and rapid manner, just and as easily as they ~~can~~ were able to conclude it. The trader should provide the consumer with a withdrawal function ~~or similar means~~, in a way that makes it easy for the consumer to find it. The consumer should be able to submit the withdrawal statement and to provide certain information to identify the contract. ~~In case~~ If the consumer is ~~has already been~~ identified, for example as a result of by logging in, the trader should ensure that the consumer ~~should be~~ is able to indicate which contract they wish to withdraw from without the necessity of identifying himself or herself again. In order to avoid the unintended use of the right of withdrawal by the consumer, the trader may consider ~~to~~ introducing safeguards such as prior control warning, ~~or~~ identification as well as the requirement to confirm the withdrawal once the consumer has submitted the necessary information to identify the contract concerned.*
- (26) Consumers may need assistance in order to decide which financial service is the most appropriate for his or her needs and financial situation. Therefore, Member States should ensure that before the conclusion of a financial service contract at a distance, traders provide such assistance in relation to the financial services which they offer to the consumer, by providing adequate explanations about the relevant information, including the essential characteristics of the products proposed. 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 online tools. 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 be able to obtain human intervention on behalf of the trader, **free of charge**, during the business hours of the trader. When implementing this provision, Member States should strive to find proportionate solutions that take into account the specificities of small and micro enterprises.
- (27) *Regulation (EU) 2022/2065 defines dark patterns as practices that materially distort or impair, either on purpose or in effect, the ability of consumers to make autonomous and informed choices or decisions. Those practices can be used to persuade the consumer to engage in unwanted behaviours or into undesired decisions which have negative consequences for them. Providers of financial services should therefore be prohibited from deceiving or nudging consumers and from distorting or impairing the autonomy, decision-making, or choice of the consumer via the structure, design or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the consumer to actions that benefit the provider of financial services, but which may not be in the consumers' interests, presenting choices*

in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision. Such practices may include making the procedure for terminating a contract more difficult than subscribing to it, using pre-ticked boxes as a way to distort, making certain choices more difficult or time-consuming than others or repeatedly requesting a consumer to make a choice where such a choice has already been made.

- (27a) *Consumers may be driven in their decisions by advertising promising a high return on investment, with respect to the promotion of certain financial services which are subject to uncertain future performances. There have been instances in Member States where influencers marketing has misled consumers through advertising speculative high-risk financial services products on social media platforms without warning of the high risk of loss for consumers. To prevent misleading information for consumers, advertising should contain a risk warning. Member States should in this regard take measures to ensure that any persons or companies who would like to advertise a financial services product on social media platforms prominently labels whether he or she has the appropriate competence to do so and that it is clearly mentioned if there is any remuneration for this advertising.*
- (28) Directive 2011/83/EU should therefore be amended accordingly.
- (29) Directive 2002/65/EC should therefore be repealed.
- (30) Since the objective of this Directive, namely, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

⁷ OJ C 369, 17.12.2011, p. 14.