

Statement on the COM 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 European Commission intends to simplify and modernise the legislative framework for financial services contracts concluded at a distance by repealing the existing Directive [2002/65/EC](#) while including relevant aspects of consumer rights regarding financial services contracts concluded at a distance within the scope of the horizontally applicable Consumer Rights Directive [2011/83/EU](#).

Our comments on the Directive [COM\(2022\) 204 final – 2022/0147 \(COD\)](#) are as follows:

No.	Title	References ¹	Text	Comments
1.	Information on withdrawal right (“cooling-off period”)	Preamble (17)	“In order to be able to make their decisions in full knowledge of the facts, consumers should receive the information at least one day prior to the conclusion of the distance contract. Only in exceptional cases can the information be provided less than a day before the conclusion of the distance contract for financial service. In	We agree that traders should be required to provide consumers with all material information (including the fact that the consumer can withdraw from the contract) generally <i>prior</i> to the conclusion of the contract. However, the provision seems to us neither necessary nor appropriate to protect the consumer’s interests

¹ References to a Preamble are references to the relevant Preamble in Directive [COM\(2022\) 204 final – 2022/0147 \(COD\)](#), and references to an Article are references to the relevant Article in Directive [2011/83/EU](#) (where applicable, after it has been amended by Directive [COM\(2022\) 204 final – 2022/0147 \(COD\)](#)).

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		New Article 16a para. 3	<p>case the contract is concluded less than one day before, the trader, within the established timeframe, should be obliged to remind the consumer about the possibility to withdraw from the distance contract for financial service.”</p> <p>“The trader shall provide the information referred to in paragraph 1 at least one day before the consumer is bound by any distance contract.</p> <p>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, at the latest, one day after the conclusion of the distance contract.”</p>	<p>in the best possible way. Already today, consumers are sufficiently protected by their right to withdraw from the contract underlying the financial services. Thus, the consumer is still free to withdraw from the (in the meantime unwanted) contract 14 days after the conclusion of the contract and without giving reasons.</p> <p>The artificially induced delay in the conclusion of the contract will also often not be in the interest of the consumer:</p> <ul style="list-style-type: none"> • Due to the artificial interruption of the online application / purchase process caused by a cooling-off period, it is to be expected that the customer experience will be negatively affected. Flowing processes with seamless transitions (e.g., to third-party providers such as providers of KYC/QES processes) will be significantly impaired and made more difficult, if not impossible; • Furthermore, the artificial delay in the provision of the financial services caused by the obligatory lead time for the pre-contractual information is often not in the interest of the consumer. Depending on the

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				<p>working day of the consumer's request for the provision of the services (e.g., in the run-up to public holidays or weekends), the actual provision of the services may be delayed by several days, especially in the traditional bank branch business.</p> <p>By imposing a one-day cooling-off period, the Directive puts the focus on uninformed and erratic consumers as opposed to consumers who are interested in simple, fast and digital order processes. In our opinion, a cooling-off period does not correspond to the simple and modern online application / purchase processes of online service providers which are desired by consumers. It also undermines the endeavours of the Member States to foster digitalisation in the European Union as well as the global competitiveness of financial services providers from the European Union.</p> <p>Therefore, in our view, traders should have fulfilled all information obligations in this regard if they have provided the relevant information to the consumer on a durable medium at any time before the conclusion of the contract, for example, "<i>in good time before</i>" the conclusion of the financial services contract (cf. also the</p>

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				Council's General Approach on the Consumer Credit Directive 2021/0171 (COD), in particular Recital 30 and Article 10 para. 1 of the directive). From our point of view, consumers should then have all the necessary information to be able to make a decision on the conclusion of the financial services contract; therefore, we also see no need for an additional reminder on the withdrawal right, which may also lead to "over-information" of consumers and, just because of such over-information, to uncertainty on the part of the consumer.
2.	Withdrawal button	Preamble (25) New Article 16a para. 5	"For distance contracts concluded by electronic means, the trader should provide the consumer with the possibility to use a withdrawal button. In order to ensure the effective use of the withdrawal button, the trader should ensure that it is visible and, when the consumer uses the button, the trader should adequately document its use." "Member States shall ensure that, for distance contracts concluded by electronic means, the trader provides a possibility to use a withdrawal button in order to facilitate the consumer's exercise of the right of withdrawal. Such button shall be clearly labelled with the words	While we understand and appreciate the efforts to facilitate the exercise of rights to withdraw for consumers, the proposed solution is not (always) feasible in practice: <ul style="list-style-type: none"> In particular, where third party service providers are involved in the process of concluding the respective financial services contract (e.g., service providers for KYC and qualified signature processes), the corresponding withdrawal button cannot be placed on the same electronic interface used for concluding the distance contract; and

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			<p>'Withdraw from Contract' or a corresponding unambiguous formulation.</p> <p>The withdrawal button shall be placed in a prominent manner and permanently available during the entire withdrawal period on the same electronic interface as the one used to conclude the distance contract. In addition, the trader may also provide the withdrawal button through another channel.</p> <p>The trader shall ensure that the activation of the withdrawal button results in an instant confirmation notice to the consumer that the right of withdrawal has been exercised, which shall include the date and time of the exercise of the right of withdrawal. Confirmation of the exercise of the right of withdrawal shall be provided by the trader to the consumer on a durable medium."</p>	<ul style="list-style-type: none"> Consumers who have not registered / opened a customer account with the financial services provider will not have the possibility to "return" to the webpage on the financial service provider's interface where the contract was concluded. <p>Therefore, a button on the webpage can only be <i>one</i> option among several equally ranked technical options to facilitate the consumer's exercise of a withdrawal right (including email with a link to a webpage of the financial services provider with a withdrawal form).</p>
3.	Information of consumers	Sec. 21 Preamble	<p>"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</p>	<p>In our experience, consumers prefer to be informed in an easily digestible way. Overloading consumers with excessive information or even legalese at the very first touch point is likely to discourage consumers to proceed with the order process. This is particularly true for any mobile interaction with</p>

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			<p>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.”</p>	<p>consumers. It should be left to the traders to decide which structure and sequence of information (taking into account the specific nature of the financial services) provides the consumer with the best overview of its financial services and other relevant information necessary for the consumer to decide whether to enter into the financial services contract. Of course, traders must always comply with all legal requirements as to accuracy, correctness, completeness and transparency of the information.</p>

Please note: We are registered in the lobby transparency register of the [German Bundestag](#) and the [European Parliament](#). In addition, we have joined Transparency International's Transparent Civil Society initiative. You can find all information [here](#) on our website.

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