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NOTE

From:	General Secretariat of the Council
To:	Delegations
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 - Presidency compromise proposal

In view of the Working Party on Consumer Protection and Information (Consumer Credits) meeting on 13 October 2022, delegations will find in Annex to this note a partial Presidency compromise proposal.

The recitals have not yet been changed and they will be fully aligned with the changes made in the Articles at a later stage.

Changes compared to the Commission proposal (doc. 9053/22) are marked in **bold, underlined** for the new text and in ~~strikethrough~~ for the deletions.

ANNEX

2022/0147 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

[1] …
[2] …

Whereas:

(1) Directive 2002/65/EC of the European Parliament and of the Council[3] 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 Council[4] lays down, 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 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 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

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[3] 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).

[4] 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).

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, 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.

(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 and penalties, 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 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, and rules ensuring online fairness 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 when financial services are contracted at a distance should contribute to the achievement of the goals laid down in Article 114 TFEU and Article 38 of the Charter of the Fundamental Rights of the EU. The rule on adequate explanations should ensure added transparency and provide the consumer with the possibility to request human intervention when he or she interacts with the trader through online interfaces, such as a chatbox or similar tools. The trader should be prohibited to deploy measures in his or her online interface that could distort or impair the consumers' ability to make a free, autonomous 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, 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. For instance, when Article 186 of Directive 2009/138/EC of the European Parliament and of the Council[5] 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 Council[6] applies, the rules on the right of withdrawal under this Directive should not apply. Likewise, certain Union acts governing specific financial services[7] contain 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 property[8], 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

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[5] 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).

[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).

[7] 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, 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)

[8] 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)

contain rules on the information to be provided to the consumer prior to the conclusion of the contract.

(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.

(17) The use of means of distance communications should not lead to an unwarranted restriction on the information provided to the consumer. 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 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 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 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.

(18) The information requirements should be modernised and updated to include, for example, the email address of the trader and the information on the risk and reward related to certain consumer financial services. Consumers should also be clearly informed when the price presented to them is personalised on the basis of automated processing.

(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 pursue an environmental or social objective such as contributing to the fight against climate change or contributing to the reduction of over-indebtedness. In order to be able to make an informed decision, the consumer should also be informed about the particular 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. 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) For distance contracts concluded by electronic means, the trader should provide the consumer with the possibility to use a withdrawal button. In order for 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.

(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.

(27) When concluding financial services contracts at a distance, traders should be prohibited to use the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers' ability to make a free, autonomous and informed decision or choice.

(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 documents[9], 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,

[9] OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

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** ~~A~~**a**rticles 1 and 2, Article 3(2), (5) and (6), Article 4, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1)~~, (2), (3) and (4)~~ and Articles 25 and 26 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 no initial service agreement but the successive operations or the separate operations of the same nature performed over time are performed between the same contractual parties, the provisions referred to in the first subparagraph shall apply only to the first operation.

Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in a new series of operations and, accordingly, the provisions referred to in the first subparagraph shall apply.’

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

‘(d) for financial services, **other than distance contracts** ~~not~~ covered by Article 3(1b).’

(2) The following Chapter is inserted:

'CHAPTER IIIa

RULES CONCERNING DISTANCE CONTRACTS FOR FINANCIAL SERVICES
~~**CONTRACTS CONCLUDED AT A DISTANCE**~~

Article 16a

Information requirements for distance contracts for ~~consumer~~ financial services

1. Before the consumer is bound by a distance contract, or any corresponding offer, the trader shall provide the consumer with the following information, in a clear and comprehensible manner:

(a) the identity and the main business of the trader **and, where applicable, that of the trader on whose behalf he is acting**;

(b) the geographical address at which the trader is established as well as the **details of the means of communication relevant for communicating with the** trader'~~s telephone number and email address; 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~~**, and where applicable, that of the trader on whose behalf he is acting**; 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 geographical address and identity of the trader on whose behalf he 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, where applicable, that of the trader on whose behalf he is acting,~~ **information on** where the consumer can address any complaints;

(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~~ **name and address** 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;

(h) where applicable, that the price was personalised on the basis of automated decision-making;

(i) where ~~relevant~~ **applicable,** 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~~ **not** 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 **in accordance with this paragraph** is valid;

(l) the arrangements for payment and for performance;

(m) any specific additional cost**s** for the consumer of using the means of distance communication, if such additional cost**s** ~~is~~ **are** charged;

(n) where applicable, a brief description of the risk-reward profile;

(o) where applicable, information on any environmental or social objectives targeted by 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 amount which the consumer may be required to pay **and procedures for exercising the right of withdrawal, *inter alia*, the address or details of the means of communication relevant for sending the notification of a withdrawal and for financial contracts conculded by electronic means, information about the existence and placement of the withdrawal button, referred to in Article 16b**~~, as well as the consequences of non-exercise of that right~~;

(q) **where applicable,** 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 or email address to which the notification of a withdrawal should be sent and for financial contracts concluded by electronic means, information about the existence and placement of the withdrawal button, referred to in Article 16d;~~

(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~~ **the** 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.

2. In the case of telephone communications, the identity of the trader and the commercial purpose of the call initiated by the trader shall be made explicitly clear at the beginning of any conversation with the consumer. **The trader shall also notify the consumer when the call is or may be recorded.**

~~Where the consumer explicitly agrees to continue the telephone communications, by way of derogation from paragraph 1, only the information referred to in points (a), (f), (g), and (p) of that paragraph needs to be provided.~~

By way of derogation from paragraph 1, the trader may provide only the information referred to in points (a), (f), (g), and (p) of that paragraph if the consumer explicitly agrees. In that case t~~T~~he trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1 and shall provide that information when fulfilling obligations under paragraph 3.

3. The trader shall provide the information referred to in paragraph 1 ~~at least one day~~ **in good time** before the consumer is bound by any distance contract **or any corresponding offer**.

~~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.~~

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

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

The information referred to in paragraph 1 shall be provided upon request in an appropriate format to consumers with disabilities, including those with a visual impairment.

4a. Except for the information referred to in paragraph 1, points (a), (f), (g), 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~~ **of layering of** information, it shall be possible to **view, save and** 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 format to consumers with a visual impairment.~~

5. As regards compliance with the information requirements laid down in this Article, the burden of proof shall be on the trader.

5a. Member States may maintain or adopt more stringent provisions on information requirements than those referred to in this Article.

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.

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.

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.

Where the trader has not provided the consumer with the contractual terms and conditions and the information in accordance with Article 16a, the withdrawal period shall expire 12 months and 14 days after the conclusion of the contract. This shall not apply if the consumer has not been informed about his right of withdrawal in accordance with point (p) of Article 16a(1).

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;~~

– **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;

– crypto-assets ~~as defined in [*Article 3(1)(2) of Commission Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/193 24.9.2020 COM(2020) 593 final*]~~**;**

(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 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 button referred to in paragraph 5 is activated by the consumer before that period has expired.

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. 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 'Withdraw from Contract' or a corresponding unambiguous formulation.

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.

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.

6. Where another Union act governing specific financial services contains rules on the ~~exercise of 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. **Where there exists an option for Member States to choose between right of withdrawal and an alternative, such as reflection period, only the corresponding rules of that Union act shall apply to those specific financial services, unless provided otherwise in that act.**

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.

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 explanations shall 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.

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 online interfaces**~~

~~Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council[10] and Council Directive 93/13/EEC[11], Member States shall adopt measures requiring that traders, when concluding financial services contracts at a distance, do not use the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers' ability to make a free, autonomous and informed decision or choice.~~

Article 2

Transposition

1. Member States shall adopt and publish by [*24 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 24+**6** 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.

~~10~~ ~~Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).~~

~~11~~ ~~Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).~~

Article 3

Repeal

Directive 2002/65/EC is repealed with effect from [*24**+6** 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

Annex to the ANNEX

Correlation Table

Directive 2002/65/EC	Directive 2011/83/EU, as amended by this Directive
Article 1(1)	-
Article 1(2), first subparagraph	Article 3(1b), second subparagraph
Article 1(2), second subparagraph	-
Article 2, point (a)	Article 2, point (7)
Article 2, point (b)	Article 2, point (12)
Article 2, point (c)	Article 2, point (2)
Article 2, point (d)	Article 2, point (1)
Article 2, point (e)	Article 2, point (7)
Article 2, point (f)	Article 2, point (10)
Article 2, point (g)	-
Article 3(1)	Article 16a(1)
Article 3(1), point 1(a), (b) and (c)	Article 16a(1), point (a) and (b)
Article 3(1), point 1(d)	Article 16a(1), point (d)
Article 3(1), point 1(e)	Article 16a(1), point (e)
Article 3(1), point 2(a)	Article 16a(1), point (f)
Article 3(1), point 2(b)	Article 16a(1), point (g)
Article 3(1), point 2(c)	Article 16a(1), point (i)
Article 3(1), point 2(d)	Article 16a(1), point (j)
Article 3(1), point 2(e)	Article 16a(1), point (k)
Article 3(1), point 2 (f)	Article 16a(1), point (l)
Article 3(1), point 2 (g)	Article 16a(1), point (m)

Article 3(1), point 3(a)	Article 16a(1), point (p)
Article 3(1), point 3(b)	Article 16a(1), point (q)
Article 3(1), point 3(c)	Article 16a(1), point (r)
Article 3(1), point 3(d)	Article 16a(1), point (s)
Article 3(1), point 3(e)	-
Article 3(1), point 3(f)	Article 16a(1), point (t)
Article 3(1), point 3(g)	Article 16a(1), point (u)
Article 3(1), point 4(a)	Article 16a(1), point (v)
Article 3(1), point 4(b)	-
Article 3(2)	-
Article 3(3), point (a)	Article 16a(2), first subparagraph
Article 3(3), point (b) first, second, third and fifth indent	Article 16a(2), second subparagraph
Article 3(3), point (b), fourth indent	-
Article 3(3), second subparagraph	Article 16a(2), third subparagraph
Article 3(4)	-
Article 4(1) and (5)	Article 16a(6)
Article 4 (2), (3), (4)	-
Article 5(1)	Article 16a(3), first subparagraph and (4), first subparagraph
Article 5(2)	-
Article 5(3)	-
Article 6(1), first subparagraph, first sentence	Article 16b(1), first subparagraph
Article 6(1), first subparagraph, second sentence	-
Article 6(1), second subparagraph, first indent	Article 16b(1), second subparagraph, point (a)
Article 6(1), second subparagraph, second	Article 16b(1), second subparagraph, point

indent	(b)
Article 6(1), third subparagraph	-
Article 6(2), point (a)	Article 16b(2), point (a)
Article 6(2), point (b)	Article 16b(2), point (b)
Article 6(2), point (c)	Article 16b(2), point (c)
Article 6(3), (4), (5), (6), (7) and (8)	-
Article 7(1), introductory wording	Article 16c(1), introductory wording
Article 7(1), first indent	Article 16c(1), point (a)
Article 7(1), second indent	Article 16c(1), point (b)
Article 7(2)	-
Article 7(3)	Article 16c(2)
Article 7(4)	Article 16c(3)
Article 7(5)	Article 16c(4)
Article 9	-
Article 10	-
Article 11, first and third subparagraphs	Article 24(1)
Article 11, second subparagraph	-
Article 12 (1)	Article 25, first subparagraph
Article 12 (2)	-
Article 13(1)	Article 23(1)
Article 13(2)	Article 23(2)
Article 13(3)	-
Article 14	-
Article 15	-
Article 16	-
Article 17	-

Article 18	-
Article 19	-
Article 20	-
Article 21	-
Article 22	-
Article 23	-