



Council of the
European Union

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

Interinstitutional File:
2022/0147(COD)

6363/23
ADD 1

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

NOTE

From: Permanent Representatives Committee (Part 1)
To: Council

No. prev. doc.: 6065/23
No. Cion doc.: 9053/22 + ADD1-4

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC
General Approach
- Statements

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

STATEMENT BY ITALY

ON THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2011/83/EU CONCERNING FINANCIAL SERVICES CONTRACTS CONCLUDED AT A DISTANCE AND REPEALING DIRECTIVE 2002/65/EC

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

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

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

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

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

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

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

Déclaration à inscrire au procès-verbal du Conseil

Conseil Compétitivité du 2 mars 2023

Déclaration du Luxembourg

Proposition de directive concernant les contrats de services financiers conclus à distance

Malgré son soutien à l'adoption de l'orientation générale, le Luxembourg souhaite faire part de ses préoccupations concernant certains aspects clés de la proposition qui ont été dénaturés au cours des discussions.

Alors que le Luxembourg souscrit pleinement à l'objectif de cette législation, à savoir parfaire le Marché intérieur des contrats transfrontaliers de services financiers conclus à distance en harmonisant certaines règles de protection des consommateurs, il estime que le mandat du Conseil ne permet pas d'atteindre cet objectif.

Le Luxembourg regrette que, malgré l'harmonisation, des dispositions clés autorisent les États membres à introduire de *nouvelles* barrières dans le Marché intérieur. Cela rend plus difficiles les transactions transfrontalières, tout en maintenant les consommateurs dans une situation où ils continuent d'être confrontés à une fragmentation juridique à travers l'UE.

Le texte en l'état

- n'apporte pas de sécurité ni de clarté juridiques au niveau de l'UE, obligeant les entreprises à potentiellement analyser et appliquer 27 législations nationales différentes lorsqu'elles concluent des contrats avec des consommateurs ;
- n'apporte pas de sécurité juridique au niveau national, car l'articulation entre le texte proposé et la législation sectorielle existante manque de clarté.

Le Luxembourg espère que le texte pourra encore être amélioré lors des prochaines étapes du processus législatif.