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COUNCIL OF THE EUROPEAN UNION

(Competitiveness (Internal Market, Industry, Research and Space))

2 March 2023

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1. Adoption of the agenda

The Council adopted the agenda set out in 6542/1/23 REV 1.

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

2. **Directive concerning financial services contracts concluded at distance**  6363/23 + COR 1 + ADD 1
General approach

The Council approved a General Approach as set out in 6363/23 + COR 1. Statements by Italy and Luxembourg are annexed to these minutes.

3. **Regulation on short-term accommodation rental services**  6522/23
General approach

The Council approved a General Approach as set out in 6522/23.

Non-legislative activities

4. Long-term competitiveness and productivity – Internal market at 30 and beyond 6043/1/23 REV 1
Policy debate

5. Approval of "A" items

Non-legislative list

6782/23

The Council adopted the "A" items listed in 6782/23 including COR and REV documents presented for adoption.

For the following items the documents should read as follows:

EU positions for international negotiations

9. Union position on Amendments to Annex 16, Volume IV of the Convention on International Civil Aviation (ICAO)
Approval
approved by Coreper, Part 1, on 01.03.2023
- 6560/23 + COR 1
+ **COR 2 REV 1**
AVIATION

Any other business

6. a) **Unitary Patent and Unified Patent Court - state of play** 2 6070/23
Information from the Presidency

The Council took note of the information provided by the Presidency.

- b) Follow-up to the EU-Ukraine Summit
Information from the Presidency and the Commission
- 6550/23

1 First reading

2 Public debate proposed by the Presidency (Article 8(2) of the Council's Rules of Procedure)

C Item based on a Commission proposal

Statements to the legislative "B" items set out in 6542/1/23 REV 1Ad "B" item 2:**Directive concerning financial services contracts concluded at distance**
*General approach***STATEMENT BY ITALY**

“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.”

STATEMENT BY LUXEMBOURG

“Notwithstanding its support for the adoption of the general approach, Luxembourg wishes to share its concerns regarding some key aspects of the proposal which have been altered during the discussions.

While Luxembourg fully supports the aim of this legislation, which is to complete the single market for cross-border financial services contracts concluded at a distance by harmonising certain consumer protection rules, it is of the opinion that the Council mandate does not allow that aim to be achieved.

Luxembourg regrets the fact that, despite the harmonisation, key provisions allow Member States to introduce *new* barriers in the single market. This makes cross-border transactions more difficult, and keeps consumers in a situation where they continue to face legal fragmentation across the EU.

The text as it stands:

- does not provide legal certainty and legal clarity at EU level, meaning that businesses potentially have to analyse and apply 27 different sets of national legislation when concluding contracts with consumers;
- does not provide legal certainty at national level, as the relationship between the proposed text and existing legislation in this sector is unclear.

Luxembourg hopes that the text can be improved further in the next stages of the legislative process.”
