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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 2 to 5 October 2023)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on the Internal Market and Consumer Protection (IMCO), Anna CAVAZZINI (Greens/EFA, DE), presented on behalf of IMCO a compromise amendment (amendment number 54) to the abovementioned proposal for a Directive, for which Arba KOKALARI (EPP, SE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 5 October 2023, the plenary adopted the compromise amendment (amendment number 54) to the abovementioned proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

(5.10.2023)**P9_TA(2023)0354****Financial services contracts concluded at a distance**

European Parliament legislative resolution of 5 October 2023 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 (COM(2022)0204 – C9-0175/2022 – 2022/0147(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0204),
- having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0175/2022),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 21 September 2022¹,
- having regard to the provisional agreement approved by the responsible committee under Rule 74(4) and the undertaking given by the Council representative by letter of 21 June 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,

¹ OJ C 486, 21.12.2022, p. 139.

- having regard to the opinion of the Committee on Economic and Monetary Affairs,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0097/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 5 October 2023 with a view to the adoption of Directive (EU) 2023/... of the European Parliament and of the Council amending Directive 2011/83/EU as regards 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,

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure⁵,

⁴ OJ C 486, 21.12.2022, p. 139.

⁵ Position of the European Parliament of 5 October 2023.

Whereas:

- (1) Directive 2002/65/EC of the European Parliament and of the Council⁶ 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 Council⁷ lays down, among others, 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 *trust and* confidence in distance selling.

⁶ 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).

⁷ 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 of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

- (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 provisions in their national legislation, other than those laid down in this Directive, with respect to aspects covered by this Directive, unless otherwise provided for 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 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 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 legal acts have been adopted at 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 that Directive to consumer financial services not regulated by sector-specific Union legislation has meant that a set of harmonised rules applies to the benefit of consumers and traders. That ‘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 that 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 *for financial services which are either not covered by Union sector-specific legislation or are excluded from the scope of Union acts governing specific financial services*.

- (8) *In order to ensure a consistent level of protection for consumers throughout the Union and to prevent divergences hampering the conclusion of financial services contracts within the internal market, rules are necessary to provide legal certainty and transparency for traders, including micro, small and medium-sized enterprises, and to provide consumers in all Member States with legally enforceable rights and obligations. Member States are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of the rules transposing this Directive. The notion of micro, small and medium-sized enterprises should be understood as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC⁸.*
- (9) 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. The complementarity between those directives is, however, limited since Directive 2011/83/EU does not cover financial services, *which are defined in that Directive as services of a banking, credit, insurance, personal pension, investment or payment nature. In this context, a housing savings account and a consumer credit agreement should be considered to be financial services. The selling of goods such as precious metals, diamonds, wine or whiskey should not be considered to be a financial service per se.*

⁸ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36)

- (10) Extending the scope of Directive 2011/83/EU to cover financial services contracts concluded at a distance should ensure the necessary complementarity. However, due to the specific nature of consumer financial services, in particular by reason of their complexity, it is not appropriate for all the provisions of Directive 2011/83/EU to apply to consumer financial services contracts concluded at a distance. By adding a dedicated chapter with rules applicable only to consumer financial services contracts concluded at a distance to Directive 2011/83/EU, the necessary clarity and legal certainty can be ensured.
- (11) *Financial services contracts concluded in some other manner than at a distance are not covered by this Directive. Member States can therefore determine, in accordance with Union law, which rules apply to such contracts, including by applying the requirements set out in this Directive to contracts not included within its scope.*
- (12) 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 and the rules on additional payments, enforcement, *inertia selling* and *reporting*, 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.

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- (13) *With regard to penalties, Member States should lay down the rules on penalties applicable to infringements of provisions in their national legislation adopted pursuant to this Directive and should take all measures necessary to ensure that they are implemented. The penalties that are provided for should be effective, proportionate and dissuasive, in line with Article 24(1) of Directive 2011/83/EU. This Directive should also include specific provisions on the imposition of penalties in accordance with Article 21 of Regulation (EU) 2017/2394 of the European Parliament and of the Council⁹ for distance contracts concluded between a trader and a consumer for the supply of financial services. The other provisions on penalties set out in Article 24(2) to (5) of Directive 2011/83/EU do not apply to distance contracts concluded between a trader and a consumer for the supply of financial services.*

⁹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

- (14) A dedicated chapter in Directive 2011/83/EU should contain the rules of Directive 2002/65/EC that are still relevant and necessary, in particular those 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.
- (15) 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. The rule on adequate explanations should ensure added transparency and provide the consumer with the *right* to request human intervention when he or she interacts with the trader through *fully automated* online interfaces, such as *chatbots, roboadvice, interactive tools* or similar *means*.

- (16) Certain consumer financial services are governed by specific Union acts, which continue to apply to those financial services. ***This Directive does not amend existing sectoral Union acts.*** In order to ensure legal certainty, ***and to ensure that there are no duplications or overlaps,*** it should be clarified that, where other Union acts governing specific financial services contain rules on pre-contractual information, on **■** the right of withdrawal ***or on adequate explanations, and irrespective of the level of detail of those rules,*** only the respective provisions of those other Union acts should apply to those specific consumer financial services unless otherwise provided in those acts, ***including the explicit option for Member States to exclude the application of those specific rules.*** In this context, whenever a specific Union act lays down rules offering Member States the possibility not to apply that specific Union act but instead refer to the application of another specific Union act, such as in Article 3(3), point (a), of Directive 2014/17/EU of the European Parliament and of the Council¹⁰, the rules of that specific Union act should prevail and this Directive should not apply. Similarly, in those instances where the specific Union act provides for rules concerning adequate alternative arrangements to ensure consumers receive timely information at the pre-contractual stage, such as in Article 3(5) of Directive 2014/17/EU, the rules laid down in that specific Union act should prevail and this Directive should not apply.

¹⁰ 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).

- (17) *With regard to pre-contractual information, certain Union acts governing specific financial services contain rules adapted for those specific financial services designed to ensure that consumers are able to understand the essential characteristics of the proposed contract. For instance, Regulation (EU) 2019/1238 of the European Parliament and of the Council¹¹ and Directives 2014/92/EU¹², 2014/65/EU¹³ and (EU) 2016/97¹⁴ of the European Parliament and of the Council provide for pre-contractual information in the basic specific Union act and also empower the Commission to adopt delegated or implementing acts. Only the pre-contractual information requirements laid down in such Union acts should apply to those specific consumer financial services, unless otherwise provided in those acts. This should also be the case where the Union act governing specific financial services provides different or minimal rules on pre-contractual information in comparison with the rules laid down by this Directive.*

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- ¹¹ 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*).
- ¹² 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*).
- ¹³ *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).*
- ¹⁴ *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).*

- (18) *With regard to the right of withdrawal, where the Union act governing specific financial services gives consumers time to consider the implications of the contract signed, and irrespective of what it is called by that Union act, only the respective provisions of that Union act should apply to those specific consumer financial services unless otherwise provided for in that act.* For instance, when Article 186 of Directive 2009/138/EC of the European Parliament and of the Council¹⁵ applies, it is the rules concerning the 'cancellation period' laid down in Directive 2009/138/EC that 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 applies, it is the rules *concerning the possibility to choose between the right of withdrawal and the reflection period laid down in Directive 2014/17/EU that apply and not the rules on the right of withdrawal laid down in this Directive* ■ .

¹⁵ 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).

(19) *In line with Directive 2014/17/EU and Directive (EU) 2023/...⁺ of the European Parliament and of the Council¹⁶, Member States can apply those Directives, in accordance with Union law, to areas not covered by their scope. Therefore, it should be clarified that Member States can apply Article 14(6) of Directive 2014/17/EU to credit agreements, despite the fact that such agreements are exempted from the scope of that Directive by Article 3(2) thereof. Similarly, it should be clarified that Member States can apply Articles 26 and 27 of Directive (EU) 2023/...⁺ to credit agreements, despite the fact that such agreements are exempted from the scope of that Directive by Article 2(2) thereof.*

⁺ JO: please insert the number of the Directive in document pe-cons 22/23 (2021/0171(COD)) and fill in the footnote.

¹⁶ Directive (EU) 2023/... of the European Parliament and of the Council of ... on credit agreements for consumers and repealing Directive 2008/48/EC (OJ L ...).

(20) ***With regard to rules on adequate explanations***, certain Union acts governing specific financial services, such as Directives 2014/17/EU, 2014/65/EU and (EU) 2016/97, already lay down rules on adequate explanations to be provided by traders to 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 ***adequate explanations*** to be provided to the consumer prior to the conclusion of the contract, ***irrespective of what it is called by that Union act.***

- (21) *Where Union acts governing specific financial services provide for rules on pre-contractual information but do not establish rules on the right of withdrawal, the provisions on the right of withdrawal under this Directive should apply. For instance, Directive 2009/138/EC sets out rules on pre-contractual information requirements but with respect to non-life insurance does not set out a right providing time to the consumer to consider the implications of the contract signed. In that case, rules on pre-contractual information laid down in the Union act governing specific financial services and the rules on the right of withdrawal as laid down in this Directive should apply. Where a Union act governing specific financial services does not contain provisions concerning information about the right of withdrawal, the trader should provide that information in accordance with this Directive in order to ensure that the consumer is properly aware of relevant information.*
- (22) *Where Union acts governing specific financial services provide for rules on pre-contractual information but do not establish rules on the right of withdrawal, the withdrawal period set out in this Directive should apply and begin either from the day of the conclusion of the distance contract in accordance with this Directive, or from the date on which the consumer receives the contractual terms and conditions and pre-contractual information in accordance with the Union acts governing those specific financial services, if that day is later than the day of the conclusion of the distance contract. Where a Union act governing specific financial services does not contain provisions concerning information about the right of withdrawal, in order for the withdrawal period to begin, the trader should, in addition to the contractual terms and conditions and pre-contractual information in accordance with the Union act governing those specific financial services, also provide the information on the right of withdrawal set out in this Directive.*

- (23) 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 respond to 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.
- (24) 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 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. ***Where there is no initial agreement, the provisions governing the financial services contracts concluded at a distance should apply to all successive or separate operations, except for the pre-contractual information, which should apply only to the first operation.*** 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, ***such as a possibility to use an electronic payment instrument together with one's existing bank account,*** does not constitute an "operation" but an additional contract.

- (25) In order to delimit the scope of application of this Directive, the rules concerning consumer financial services contracts 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.
- (26) 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 voice telephony communication, the trader can, if the consumer explicitly agrees, provide only a limited set of pre-contractual information before the consumer is bound by the distance contract. The trader should provide the remaining information immediately after the conclusion of 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 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 *all pre-contractual information in good time before and not at the same time as* the conclusion of the distance contract *or any corresponding offer. This is to ensure that the consumer has sufficient time to read and understand the pre-contractual information, compare offers and make an informed decision. Where the information is* provided less than a day before the conclusion of the distance contract for financial services ■ , the trader ■ should be obliged to remind the consumer, *on a durable medium*, about the possibility to withdraw from the distance contract for a financial service. *In the event that pre-contractual information is provided less than one day before the consumer is bound by any distance contract, the trader should remind the consumer, on a durable medium, between one and seven days after the conclusion of the contract, of the possibility to withdraw from the distance contract.*

(27) The information requirements should be modernised and *made future-proof*. *Therefore, the trader should communicate to the consumer its telephone number, but also its email address or details of other means of communication which can encompass various methods of communication, as well as the information on where to address complaints. The requirements on the complaint handling policy can be determined by Member States.* Consumers should be informed *about the specific additional costs of using the means of distance communication. Some traders use automated decision making to differentiate prices between different consumer groups and in certain cases prices are adapted to the consumers' individual price sensitivity. For that reason, consumers should be informed before they are bound by a distance contract that the price of the financial service was personalised on the basis of automated decision making.*

(28) *Under Directive 2002/65/EC Member States were able to maintain or introduce more stringent provisions on prior information requirements provided that those provisions were in conformity with Union law. Several Member States have maintained or introduced more stringent information requirements in that context. The possibility to offer a higher level of consumer protection with respect to the rules on pre-contractual information should remain. This should apply both to the information catalogue and to the ways of presenting information. The application of more stringent rules can also include the application of requirements set out in Union acts concerning specific financial services to financial services not covered by those sectoral Union acts.*

- (29) 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 environmental or social objectives targeted by the financial service.
- (30) *All pre-contractual information should be provided on a durable medium and in a way that the information is both easy for the consumer to comprehend and is in a readable format. Being in a readable format means using characters of a readable size and in colours that do not diminish the comprehensibility of the information, including when the document is presented, printed or photocopied in black and white. Additionally, overly lengthy and complex descriptions, small print, and excessive use of hyperlinks should be avoided, as much as possible, as these are methods that diminish the understanding of consumers. If the information cannot be provided on a durable medium before the conclusion of the contract due to the media chosen by the consumer, it should be provided immediately after the conclusion.*

- (31) 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 should be provided upfront and in the most prominent manner possible : 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 *layered*. However, all the information should be provided on a durable medium before the conclusion of the distance contract.

- (32) When providing pre-contractual information through electronic means, such information should be presented in a clear and comprehensible manner. In that regard, the information could be highlighted, framed and contextualised effectively within the display screen. The technique of layering, *whereby certain pre-contractual information requirements are considered to be key elements and are thus placed prominently on the first layer and other detailed parts of the pre-contractual information are presented in accompanying layers*, has been tested and has been proved to be useful for certain financial services. *When making use of the technique of layering pursuant to this Directive, the trader should provide, on the first layer of the electronic means, at least, the identity and the main business of the trader, the main characteristics of the financial service, the total price to be paid by the consumer, notice of the possibility that other taxes or costs might exist and the existence or absence of a right of withdrawal. The other remaining pre-contractual information requirements could be displayed in other layers. When layering is used, all the information should be easily accessible to the consumer and the use of accompanying layers should not distract the customer's attention from the content of the document and should not obscure key information. It should be possible to print all the parts of the pre-contractual information in one single document.*

- (33) *Another* possible manner of providing pre-contractual information ■ through *electronic means is* the ‘table 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.
- (34) 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.

- (35) *The withdrawal period should expire 14 calendar days after either the day of the conclusion of the distance contract or the day on which the consumer receives both the pre-contractual information and the contractual terms and conditions, if that day is later than the date of the conclusion of the distance contract. The period should be extended to 30 calendar days in distance contracts relating to personal pension operations. In order to increase legal certainty, if the consumer has not received that pre-contractual information and contractual terms and conditions, the withdrawal period should expire at the latest 12 months and 14 calendar days after the conclusion of the distance contract. The withdrawal period should not expire if the consumer has not been informed on a durable medium about the right of withdrawal.*
- (36) 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.

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- (37) *In addition to other existing means of withdrawal, such as the form laid down in Annex I(B) of Directive 2011/83/EU, where the trader offers the possibility of concluding distance contracts by means of an online interface, such as through a website or application, the trader should be obliged to enable the consumer to withdraw from such a contract via a function. This should ensure that consumers can withdraw from a contract just as easily as they can conclude it. To achieve this, the trader should provide the consumer with a withdrawal function that is easy for the consumer to find, continuously available and clearly visible during the withdrawal period. The consumer should be able to find and access the function in an easy and simple manner. For example, the consumer should not have to undertake procedures to find or access the function, such as downloading an application if the contract was not concluded via that application. To facilitate the process, the trader could for example provide hyperlinks leading the consumer to the withdrawal function. The consumer should be allowed to make the withdrawal statement and to provide or confirm the information necessary to identify the contract. For instance, a consumer who has already identified himself or herself, for example by logging in, should be able to withdraw from the contract without the necessity of providing once more their identification or, where applicable, the identification of the contract from which he or she wishes to withdraw. In order to avoid the unintended exercise of the right of withdrawal by the consumer, the trader should require the consumer to confirm the decision to withdraw by means that confirm the consumer's intention to do so.*

If the consumer has ordered multiple goods or services within the same distance contract, the trader can provide the consumer with the possibility to withdraw from a part rather than the whole of the contract. When the consumer uses the function to exercise the right of withdrawal, the trader should communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without undue delay. This obligation should apply not only to distance contracts for financial services, but to all distance contracts that are subject to the right of withdrawal under Directive 2011/83/EU. The objective of the withdrawal function is to increase the awareness of consumers of their right of withdrawal and to simplify the possibility of benefiting from that right, since when it comes to distance selling of both financial or non-financial products or services, the consumer does not have the possibility to receive explanations in person, or to learn in person about the possibly complex or extensive nature of a product or service. Therefore, this obligation should be laid down not only for distance contracts for financial services, but also for distance contracts for other goods and services where Union law provides for a right of withdrawal to enhance the possibilities for consumers to get out of contracts by means of withdrawal.

- (38) *In addition to the pre-contractual information provided to them by the trader, consumers may **still** need assistance in order to decide which financial service is the most appropriate for their needs and financial situation. **The main objective of the provision of adequate explanation is to ensure that the consumer understands the financial service offered by the trader before he or she signs the contract. In order to ensure that this objective is fulfilled, that adequate explanation should be given in a timely manner which allows the consumer sufficient time to review it prior to the conclusion of the contract. The mere reproduction of the pre-contractual information might not be sufficient and it should therefore be avoided.** 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 **concerning the essential characteristics of the contract**, including the **possible ancillary services, and the specific effects which that contract may have on the consumer. With regard to the** essential characteristics of the **contract, the trader should explain the main features of the offer, such as the total price to be paid by the consumer to the trader and the description of the main characteristics of the financial service, and its impact on the consumer, including, where applicable, whether the ancillary services can or cannot be terminated separately and the consequences of such termination. With regard to the specific effects of the proposed contract, the trader should also explain the main consequences of non-compliance with the contractual obligations thereof.***

- (39) *Contracts falling under the scope of this Directive can be of different financial natures and thus can vary considerably. Therefore, Member States could adapt the way in which such explanations are given to the circumstances in which the financial service is offered and to the consumer's need for assistance, taking into account the consumer's knowledge and experience of the financial service and its nature. In order to ensure that the consumer obtains adequate explanations, Member States should encourage traders to provide such explanations to the consumer in an easy and straightforward manner, in the interest of the consumer.*
- (40) 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 *fully automated* online tools *such as chatbots, roboadvice, interactive tools or similar means*. 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, *at the pre-contractual phase*, be able to obtain human intervention on behalf of the trader, *free of charge, during business hours of the trader. The consumer should also have the right, in justified cases and without undue burden for the trader, to request human intervention after the distance contract has been concluded. This could include the right to human intervention when renewing a contract, in the event of major difficulties for the consumer or when further explanation regarding the contractual terms and conditions is needed.*

- (41) *Dark patterns on traders' online interfaces are practices that materially distort or impair, either on purpose or in effect, the ability of consumers who are recipients of the financial service to make autonomous and informed choices or decisions. This is particularly true for financial services contracts concluded at a distance. Such practices can be used by traders to persuade the consumers who are recipients of their service to engage in unwanted behaviours or to take undesired decisions which may have negative consequences for them. Traders should therefore be prohibited from deceiving or 'nudging' consumers who are recipients of their service and from distorting or impairing their autonomy, decision making, or choice via the structure, design or functionalities of an online interface or a part thereof. This can include, but is not limited to, exploitative design choices to direct the consumer to choices or actions that benefit the trader, but which may not be in the consumer's interests, by presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the consumer for a decision.*

While Regulation (EU) 2022/2065 of the European Parliament and of the Council¹⁷ prohibits intermediary service providers operating online platforms from using dark patterns in the design and organisation of their online interfaces, this Directive should oblige Member States to prevent traders offering financial services at a distance from using such patterns when concluding contracts for such services. The provisions of that Regulation and this Directive are therefore complementary, since they apply to traders acting in different capacities. Since, by reason of their complexity and inherent serious risks, financial services might necessitate further detailed requirements regarding dark patterns, Member States, by way of derogation from the full level of harmonisation, should be allowed to maintain or introduce more stringent provisions, provided that such provisions are in conformity with Union law. That possibility is in line with Art 3(9) of Directive 2005/29/EC of the European Parliament and of the Council¹⁸, with regard to unfair commercial practices related to financial services, which provides that Member States can also impose requirements which are more restrictive or prescriptive in the framework of financial services.

¹⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

¹⁸ 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).

- (42) *Financial services concluded at a distance can be marketed on social media, for instance, by influencers. Consumers could be encouraged to make decisions without reflecting on the consequences and risks implied and they could purchase financial services which do not correspond to their needs. The Commission should assess traders' marketing practices on social media promoting financial services concluded at a distance and the possible need for action in that regard. This should, for example, be done in the light of the application of Directive 2005/29/EC and other relevant Union legislation to such practices. There have been instances in Member States where influencer marketing practices have misled consumers through advertising certain financial services products on social media platforms without informing about the risk of loss for consumers. Directive 2005/29/EC contains provisions to ensure that misleading practices which deceive or are likely to deceive the average consumer are prohibited and that material information that the average consumer needs in order to take an informed transactional decision cannot be omitted. Those provisions can be deemed to cover influencer marketing practices on social media platforms.*

- (43) Directive 2011/83/EU should therefore be amended accordingly.
- (44) Directive 2002/65/EC should therefore be repealed.
- (45) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market through the achievement of a high level of consumer protection, cannot be sufficiently achieved by the Member States but can rather 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.
- (46) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁹, 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,

HAVE ADOPTED THIS DIRECTIVE:

¹⁹ OJ C 369, 17.12.2011, p. 14.

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 is inserted:

‘(1b) In the case of distance contracts concluded between a trader and a consumer for the supply of financial services, **only** Articles 1 and 2, Article 3(2), (5) and (6), Article 4, **Article 6a**, **Article 8(6)**, **Article 11a**, Articles 16a to 16e, Article 19, Articles 21 to 23, Article 24(1) ■ and (6), Articles 25 **to 27** and **Article 29** shall apply.

With the exception of Article 21, 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.

In the event that there is no initial service agreement but the successive operations, or separate operations, of the same nature performed over time are performed between the same contractual parties, Articles 16a and 16d 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, Articles 16a and 16d shall apply.’;

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

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

(2) *in Article 6(1), point (h) is replaced by the following:*

‘(h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B), and, where applicable, information about the existence and placement of the withdrawal function referred to in Article 11a;’;

(3) *the following Article is inserted:*

‘Article 11a

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

1. *For distance contracts concluded by the means of an online interface, the trader shall ensure that the consumer can also withdraw from the contract by using a withdrawal function.*

The withdrawal function shall be labelled with the words “withdraw from contract here” or an unambiguous corresponding formulation in an easily legible way. The withdrawal function shall be continuously available throughout the withdrawal period. It shall be prominently displayed on the online interface and easily accessible to the consumer.

2. *The withdrawal function shall enable the consumer to send an online withdrawal statement informing the trader of his or her decision to withdraw from the contract. That online withdrawal statement shall enable the consumer to easily provide or confirm the following information:*

(a) his or her name;

- (b) *details identifying the contract from which he or she wishes to withdraw;*
 - (c) *details of the electronic means by which the confirmation of the withdrawal will be sent to the consumer.*
3. *Once the consumer has completed the online withdrawal statement in accordance with paragraph 2, the trader shall enable the consumer to submit it to him by means of a confirmation function.*

That confirmation function shall be labelled in an easily legible manner, and only with the words “confirm withdrawal” or with an unambiguous corresponding formulation.

4. *Once the consumer activates the confirmation function, the trader shall send to the consumer an acknowledgement of receipt of the withdrawal on a durable medium, including its content and the date and time of its submission, without undue delay.*
5. *The consumer shall be considered to have exercised his or her right of withdrawal within the relevant withdrawal period if he or she submitted the online withdrawal statement referred to in this Article before that period expired.’;*

(4) 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. ***In good time before*** the consumer is bound by a distance contract, or any corresponding offer, the trader shall provide the consumer, in a clear and comprehensible manner, with the following information:
 - (a) the identity and the main business of the trader ***and, where applicable, the identity and the main business of the trader on whose behalf he is acting;***
 - (b) the geographical address at which the trader is established as well as the trader’s telephone number and email address, ***or details of any other means of communication offered by the trader and, where applicable, those of the trader on whose behalf he is acting;*** all those means of communication offered by the trader shall enable the consumer to contact the trader quickly and to communicate with him efficiently ***and guarantee that the consumer can keep any written correspondence with the trader on a durable medium;***

- (c) *relevant contact details enabling the consumer to 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 ■ 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 *name, address, website and any other contact information* 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, information on the consequences of late or missed payments*;
- (i) where applicable, that the price was personalised on the basis of automated decision making;

- (j) where *applicable*, a 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 a notice indicating that historical performances are *not* indicators for future performances;
- (k) notice of the possibility that other taxes and/or costs that are not paid via the trader or imposed by him might exist;
- (l) any limitations of the period for which the information provided *in accordance with this paragraph* is valid;
- (m) the arrangements for payment and for performance;
- (n) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged;

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- (o) ■ *where environmental or social factors are integrated into the investment strategy of* the financial service, 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, information on the withdrawal period and the conditions for exercising that right including information on the amount 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 might have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed under the contract in such cases;
- (s) practical instructions *and procedures* for exercising the right of withdrawal *in accordance with Article 16b(1)*, indicating, inter alia, the *trader's telephone number and email* address or *details of other means of communication relevant to the sending of the* ■ *withdrawal statement and, for financial services contracts concluded by means of an online interface*, information about the existence and placement of the withdrawal *function* referred to in Article *11a*;
- (t) any contractual clause on the law applicable to the distance contract and/or on the 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 *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;
- (w) *the existence of guarantee funds or other compensation arrangements, not covered by Directives 2014/49/EU * and 97/9/EC of the European Parliament and of the Council**.*

2. *Member States may maintain or introduce in their national law language requirements regarding the information referred to in paragraph 1, so as to ensure that such information is easily understood by the consumer.*

3. In the case of **voice telephony** 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 **call** with the consumer. ***When a call is being recorded, or might be recorded, the trader shall also notify the consumer that this is the case.***
4. ***By way of derogation from paragraph 1, in the case of voice telephony*** communications as referred to in paragraph 3, ***if the consumer explicitly agrees, the trader may provide*** only the information referred to in points (a), (f), (g), (***k***) and (p) of paragraph 1 ***before the consumer is bound by the distance contract. In such case, the*** trader shall inform the consumer of the nature and the availability of the other information referred to in paragraph 1. ***The trader*** shall provide that ***other*** information required by paragraph 1 ***on a durable medium immediately after the conclusion of the*** distance contract.
5. In the event that 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 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, on a durable medium, ***between one and seven days*** after the conclusion of the distance contract.

6. The information referred to in paragraph 1 shall be **provided** to the consumer on a durable medium and **be** easy to read **■** .

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

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

Where information is layered, it shall be possible to **view, save and** print the information referred to in paragraph 1 as one single document.

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In such cases, the trader shall ensure that the consumer is presented with all the pre-contractual information referred to in paragraph 1 before the conclusion of the distance contract.

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

9. *Member States may adopt or maintain more stringent provisions on pre-contractual information requirements than those referred to in this Article, when the provisions are in conformity with Union law.*
10. 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 **rules** of that Union act shall apply to those specific financial services, *irrespective of the level of detail of those rules, unless otherwise provided in that Union act.*

Where that other Union act does not contain rules on information about the right of withdrawal, the trader shall inform the consumer about the existence or absence of such a right in accordance with paragraph (1), point (p).

Article 16b

Right of withdrawal from distance contracts for financial services

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

The withdrawal period referred to in the first subparagraph shall begin either:

- (a) from the day of the conclusion of the distance contract, or
- (b) from 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 and the information in accordance with Article 16a, the withdrawal period shall in any event expire 12 months and 14 days after the conclusion of the distance contract. This shall not apply if the consumer has not been informed about his or her right of withdrawal in accordance with Article 16a(1), point (p).

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 trader's control, which might 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;

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(b) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;

- (c) contracts the performance of which has been fully completed by both parties at the consumer's express request before the consumer exercises his or her right of withdrawal.
3. The consumer shall be considered to have exercised his *or her* right of withdrawal within the withdrawal period referred to in paragraph 1 if he or she has sent the communication concerning the exercise of the right of withdrawal before that period expired.
4. *Where an ancillary service relating to the distance contract for financial service is provided by the trader or by a third party on the basis of an agreement between that third party and the trader, the consumer shall not be bound by the ancillary contract if the consumer exercises his or her right of withdrawal in accordance with this Article. Where the consumer chooses to terminate the ancillary contract, it shall be without any costs for the consumer.*
5. 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.

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6. Where another Union act governing specific financial services contains rules on the right of withdrawal, only rules of that Union act on the right of withdrawal shall apply to those specific financial services, *unless otherwise provided in that other Union act. Where that other Union act gives Member States the right to choose between the right of withdrawal and an alternative, such as a reflection period, only the corresponding rules of that Union act shall apply to those specific financial services*, unless otherwise provided in that other Union act.
7. *By way of derogation from this Article, Member States may choose to instead apply the following provisions to the following financial services with regard to the right of withdrawal or a reflection period:*
- (a) *Article 14(6) of Directive 2014/17/EU of the European Parliament and of the Council*** to credit agreements exempted from the scope of that Directive by Article 3(2) thereof; and*

- (b) *Articles 26 and 27 of Directive (EU) 2023/... of the European Parliament and of the Council ^{*****} to credit agreements exempted from the scope of that Directive by Article 2(2) thereof.*

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 for the service actually provided by the trader in accordance with the distance contract. The consumer shall pay for that service without undue delay. 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. *Member States may provide that consumers cannot be required to pay any amount for withdrawing from an insurance contract.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE- CONS 22/23 (2021/0171(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

3. 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 accordance with Article 16a(1), point (p). However, the trader may not require such payment if the trader 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.
4. The trader shall, without any undue delay and no later than within 30 calendar days of the date on which the trader receives the notification of withdrawal, return to the consumer any sums the trader has received from him or her in accordance with the distance contract, except for the amount referred to in paragraph 1.
5. 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 of the date 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 concerning 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. ***Such explanations shall be provided to the consumer free of charge and prior to the conclusion of the contract.*** The explanations shall include the following elements:
 - (a) the required pre-contractual information;
 - (b) the essential characteristics of the proposed contract, including possible ancillary services;
 - (c) the specific effects that the proposed contract may have on the consumer, including, ***where applicable***, the consequences of payment default or late payment by the consumer.

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2. *Member States may specify the manner in which, as well as the extent to which, the explanations referred to in paragraph 1 are given. Member States may adapt the manner and the extent to the circumstances of the situation in which the financial service is offered, the person to whom it is offered and the nature of the financial service offered.*
3. Member States shall ensure that, in the event that the trader uses online tools, the consumer shall have a right to request and to obtain human intervention *at the pre-contractual stage, and in justified cases after the distance contract has been concluded, in the same language as that used for the pre-contractual information provided in accordance with Article 16a(1).*
4. *As regards compliance with the adequate explanation requirements laid down in this Article, the burden of proof shall be on the trader.*
5. Where another Union act governing specific financial services contains rules on the *adequate explanations* to be provided to the consumer, *only rules on the adequate explanations of that Union act* shall ■ *apply to those specific financial services, unless otherwise provided in that Union act.*

Article 16e

Additional protection regarding online interfaces

- 1. Without prejudice to Directive 2005/29/EC and Regulation (EU) 2016/679, Member States shall ensure 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 of the European Parliament and of the Council*****, in a way that deceives or manipulates consumers who are recipients of their service or otherwise materially distorts or impairs their ability to make [] free [] and informed decisions. In particular, Member States shall adopt measures that, in accordance with Union law, address at least one of the following practices by traders:*
- (a) giving more prominence to certain choices when asking the consumers who are recipients of their service for a decision;*
 - (b) repeatedly requesting that consumers who are recipients of the service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience; or*
 - (c) making the procedure for terminating a service more difficult than subscribing to it.*

2. *Member States may adopt or maintain more stringent provisions regarding the requirements for traders set out in paragraph 1, when the provisions are in conformity with Union law.*

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- * *Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).*
- ** *Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes (OJ L 84, 26.3.1997, p. 22).*
- *** *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).*
- **** *Directive (EU) 2023/... of the European Parliament and of the Council of ... on credit agreements for consumers and repealing Directive 2008/48/EC (OJ, ...).*
- ***** Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).’;

(5) *in Article 24, the following paragraph is added:*

‘6. With regard to infringements of the measures adopted pursuant to the provisions referred to in Article 3(1b) applicable to distance contracts for consumer financial services, Member States shall ensure that, when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both.’;

(6) *in Article 29, paragraph 1 is replaced by the following:*

‘1. Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 6(7), Article 6(8), Article 7(4), Article 8(6), Article 9(1a) and (3), Article 16, second and third paragraphs, Article 16a(2) and (9), Article 16b(7) and Article 16e, it shall inform the Commission thereof by [date of transposition], as well as of any subsequent changes.’;

(7) Annex I is amended in accordance with Annex I to this Directive.

Article 2

Transposition *and review*

1. Member States shall adopt and publish by ... [24 months from *the date of entry into force* of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from ... [**30 months** from *the date of entry into force* of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main measures in national law which they adopt in the field covered by this Directive.
3. ***By 31 July 2030, the Commission shall submit a report on the application of this Directive, including the withdrawal function, to the European Parliament and to the Council. That report shall include an evaluation of the functioning of the single market for financial services concluded at a distance in the Union and the impact of this Directive on other relevant Union law.***

Article 3

Repeal

Directive 2002/65/EC is repealed with effect from [30 months from the date of entry into force of this Directive].

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 ...,

For the European Parliament

The President

For the Council

The President

ANNEX I

Annex I to Directive 2011/83/EU is amended as follows:

In ‘A. Model instructions on withdrawal’, under the heading ‘Instructions for completion’, instruction 3 is replaced by the following:

“[3] If you are under obligation to provide a function to allow the consumer to withdraw from the contract concluded online, insert the following: ‘You can also exercise your right of withdrawal online at [insert Internet address or another appropriate explanation of where the withdrawal function is available]. If you use this online feature, we will send you an acknowledgement of receipt of the withdrawal on a durable medium (e.g. by e-mail), including its content and the date and time of its submission, without undue delay.’ If you give the option to the consumer to electronically fill in and submit information about his or her withdrawal from the contract on your website, insert the following: ‘You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay’.”.

ANNEX II

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 3(1b), third and fourth subparagraphs
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 (j)
Article 3(1), point 2(d)	Article 16a(1), point (k)
Article 3(1), point 2(e)	Article 16a(1), point (l)

Directive 2002/65/EC	Directive 2011/83/EU, as amended by this Directive
Article 3(1), point 2 (f)	Article 16a(1), point (m)
Article 3(1), point 2 (g)	Article 16a(1), point (n)
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 16a(1), point (w)
Article 3(2)	-
Article 3(3), first subparagraph, point (a)	Article 16a(3)
Article 3(3), first subparagraph, point (b), and second subparagraph	Article 16a(4)
Article 3(4)	-
Article 4(1) and (5)	Article 16a(10)
Article 4 (2)	Article 16a(9)
Article 4(3) and (4)	-

Directive 2002/65/EC	Directive 2011/83/EU, as amended by this Directive
Article 5(1)	Article 16a(1), first subparagraph, (5) and (6), 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 indent	Article 16b(1), second subparagraph, point (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 16c(2)
Article 7(3)	Article 16c(3)
Article 7(4)	Article 16c(4)
Article 7(5)	Article 16c(5)

Directive 2002/65/EC	Directive 2011/83/EU, as amended by this Directive
Article 9	-
Article 10	-
Article 11, first and third paragraphs	Article 24(1)
Article 11, second paragraph	-
Article 12 (1)	Article 25, first paragraph
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	-
