



OPINION

European Economic and Social Committee

Financial services contracts

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) 204 final – 2022/0147 (COD)]

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Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	08/09/2022
Adopted at plenary	21/09/2022
Plenary session No	572
Outcome of vote (for/against/abstentions)	229/0/3

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) welcomes the Commission's initiative to amend Directive 2011/83/EU concerning financial services contracts concluded at a distance and repeal Directive 2001/65/EC. The evolution of society and its behaviour, the new technical solutions that are emerging, and the strengthening of the single market as a mean to ensure the free movement of financial services and consumer protection rules require it. The COVID-19 crisis was an incredible test of EU resilience and has imposed new trends and ideas that must be addressed. The EESC also supports this proposal from this perspective.
- 1.2 Despite being in favour of the proposal, the EESC insists on the need to invest in peoples' digital and financial literacy in order to enable consumers to correctly understand their rights and duties relating to financial contracts concluded at a distance, particularly the right to withdrawal from a contract and the right to obtain more information in a pre-contractual phase. The Member States need to invest in a strategic communication programme in order to boost the potential of the single market, in line with fundamental consumer rights.
- 1.3 The EESC states that a balanced approach between the digital and the "brick and mortar" experience is crucial. The EESC supports the advances brought about by technological innovation, but also highlights that human contact is still essential where clarification and data protection is involved. Bearing in mind that digitalisation and modernisation are very important when it comes to improving citizens' well-being, the EESC also states that there are still many differences between Member States and even between regions, with some asking for several pieces of "physical" infrastructure to be maintained in order to support the local community. The EESC believes that involving local authorities in the decision-making processes of financial companies, particularly concerning the existence of physical infrastructure in rural areas, could help support local communities. The EESC calls for the right to ask for "human intervention" in financial services at a distance to be guaranteed.
- 1.4 The EESC, and the civil society organisations that are represented within it, believe in the potential of the single market as a tool to strengthen the European project. Increasing confidence in our financial systems is a fundamental principle that supports society in the area of consumer financial services. In this connection, the EESC also draws attention to the need to invest in cybersecurity in a consistent way. Citizens must be aware of the risks associated with concluding contracts at a distance. More than that, however, they need to feel confidence in the system if we are to boost the single market and the free movement of financial services, which are becoming increasingly relevant, especially after the COVID-19 situation, and particularly with the development of e-commerce activities and digital services.
- 1.5 The EESC reminds the Commission of the need to harmonise this proposal with the Consumer Rights Directive. After so many achievements linked to the Consumer Rights Directive, and bearing in mind the launch of the New Consumer Agenda¹, this particular dossier on financial services at a distance is the perfect moment to strengthen respect for consumer rights and boost companies' investments in this area. The EESC calls for civil society organisations to be

¹ [OJ C 286, 16.7.2021, p. 45.](#)

involved in order to better prepare for and monitor the future implementation of the Directive. This is a good example of an area where civil society organisations can support and contribute to a better environment and help ensure a positive approach.

- 1.6 Artificial intelligence (AI) mechanisms can provide a safe and reliable environment for this proposal for a Directive. The EESC understands the power of innovation for society and advocates using all means possible to provide a safe and modern experience to consumers and companies in this particular area. The EESC has been working in this area and strongly recommends that AI be used to build a better, more integrated single market that supports citizens and ensures secure operations within the financial system².
- 1.7 The EESC argues that, taking into consideration the objectives and principles of the single market, the EU can establish good practices regarding the regulation of financial services at a distance. This proposal addresses relevant measures for companies and consumers, but the EESC insists on the need to clarify the activities of companies based outside the EU, which can impact on European citizens. For the EESC, the need for harmonisation must also be addressed and respected accordingly.
- 1.8 The EESC calls for action regarding "publicity rules and norms" linked to the sensitive process of delivering financial services at a distance. It is vital to harmonise rules governing the advertisement of these services in order to avoid unfair competition and undermine the system. Provided the message is strong, the results are expected to benefit companies and citizens, and have a positive impact on consumer behaviour, including with respect to sustainability. The EESC also insists that consumer organisations must be involved in order to allow for better dialogue between companies and citizens.
- 1.9 Finally, the EESC considers that, in order to better implement the Directive and truly benefit from its principles, investment in infrastructure is vital in order to achieve better results. Citizens can no doubt benefit from better and more transparent services, but in line with this is the need to have access to 5G, full network coverage and other infrastructural facilities in all areas, and this is far from being a general reality. The EESC calls for better and more efficient use of the financial resources under the Recovery and Resilient Facility in order to address these investments and ensure no one is left behind.

2. **General comments**

- 2.1 Directive 2002/65/EC on Distance Marketing of Consumer Financial Services (DMFSD) aims to ensure the free movement of financial services in the single market by harmonising certain consumer protection rules in this area, and to ensure a high level of consumer protection. It is important to highlight that there are already a number of recent directives and regulations establishing high standards of consumer protection, and the merit of the proposal for a new Directive is to provide a safety net in cases where this protection is, or might be, missing. Where there is no EU product-specific legislation or no EU horizontal rules covering the consumer financial service, the Directive shall apply horizontally to any present or future

² [OJ C 517, 22.12.2021, p. 61.](#)

service of a banking, credit, insurance, personal pension, investment or payment nature contracted by means of communication at a distance (i.e., without the simultaneous physical presence of the trader and the consumer). The Directive sets out information to be provided to the consumer prior to the conclusion of the distance contract (pre-contractual information), grants the consumer a right of withdrawal for certain financial services, and establishes rules on unsolicited services and unsolicited communication.

- 2.2 Over the past 20 years, the distance marketing of consumer financial services has changed rapidly. Financial service providers and consumers have abandoned the fax machine, and new players, such as fintech companies, with new business models and new distribution channels have emerged, e.g. financial services sold online.
- 2.3 The Commission's proposal aims to simplify and modernise the legislative framework by repealing the existing DMFSD, while including relevant aspects of consumer rights regarding financial services contracts concluded at a distance within the scope of the horizontally applicable Consumer Rights Directive.
- 2.4 The overall objective of the legislation remains unchanged, namely to promote the provision of financial services in the single market while ensuring a high level of consumer protection. This objective is obtained in five distinct ways:
 - full harmonisation: the rules will be similar for all financial service providers and consumers will be guaranteed the same rights in all EU Member States;
 - pre-contractual information: receiving key information in a timely manner and in a clear and comprehensible way, whether electronically or on paper, ensures the necessary transparency and empowers consumers. In this regard, the proposal aims at regulating what, how and when pre-contractual information is to be provided;
 - right of withdrawal: the right of withdrawal is a basic consumer right. It is particularly important in the area of financial services since certain products and services are complex and might be difficult to understand;
 - online fairness: financial services contracts are increasingly concluded electronically. This is why, in order to ensure a high level of consumer protection, the proposal sets out special rules to protect consumers when concluding contracts for financial services by electronic means; and
 - enforcement: the proposal extends the rules on enforcement and penalties currently applicable in Directive 2011/83/EU on consumer rights ("the Consumer Rights Directive") to financial services contracts concluded at a distance.

3. **Financial services and the single market**

- 3.1 The EESC believes that the EU as a whole is facing serious challenges following the COVID-19 crisis, with Russian aggression in Ukraine and a financial crisis on the horizon. It is a fact that

consumer confidence has been shaken. Furthermore, high levels of household debt is something to be addressed and is far from having been overcome. This must be taken into consideration in the context of all measures relating to financial policies. Consumers must have confidence in the system, and this is crucial in order to build trust and ensure the recovery of our economies and society.

- 3.2 The EESC agrees on the need for harmonisation. However, this cannot undermine or prejudice citizens. It is necessary to understand that not all citizens move at the same pace when it comes to digitalisation and this process should leave no one behind. The EESC believes that investment in financial literacy should be a priority that is closely aligned with the proposal.
- 3.3 It is important to ensure that data protection is at the heart of this process. European citizens must have the confidence to share data for legal and consumer rights purposes and this can only be achieved by having a strong and reliable system. Data protection is nowadays at the forefront of citizens' concerns, and cybersecurity is key to boosting the communication process where distance financial services are concerned.
- 3.4 Ensuring that this proposal is harmonised with the Consumer Rights Directive is vital. It is also crucial to ensure that the principles of the New Consumer Agenda³ are at the heart of this concept. The EESC believes that organised civil society and the social partners can play a positive role in the process, primarily in helping citizens defend their rights, but also by creating a good atmosphere in which companies can compete and create better and clearer services for consumers.
- 3.5 Artificial intelligence mechanisms are key to this proposal. They could facilitate consumer operations by facilitating processes and the associated requirements, especially for citizens who are less well prepared or "digitalised". The EESC calls for the clarification of and use of these tools in order to make the future implementation process more successful.
- 3.6 The EESC advocates ensuring a level playing-field in this area so that every player (company) can provide a reliable service to citizens. It is therefore essential to invest in transparency and in providing clear messages in order to avoid unfair competition from outside Europe, which risks undermining the positive impact envisaged in this proposal for a Directive.

4. **Impact on consumers and enterprises: online and offline operations**

- 4.1 Digitalisation is needed in order to boost competitiveness and facilitate people's lives. The EESC considers it essential to ensure everybody has the right conditions in which operate, with the same level of knowledge. However, this is far from being a reality.
- 4.2 The EESC calls for "smart digitalisation", where technology is there to serve citizens, facilitate communication, and boost people's welfare. However, digitalisation in and of itself is not the solution to all problems and instead must be aligned with other priorities. People's level of knowledge regarding the use of technology is still very uneven across the EU, and investments

³ [OJ C 286, 16.7.2021, p. 45.](#)

must be made with this in mind. Finally, the EESC reminds the Commission that, while the use of technology is important, so too is the right to "disconnect" and this must be taken into consideration in the policy-making process.

- 4.3 Financial companies must ensure that all changes are well perceived by the market. Communication is therefore essential in order to achieve results and lead the transformation process.
- 4.4 The EESC is undoubtedly in favour of technology and innovation that can provide a better consumer experience and facilitate citizens' lives. The evolution of consumer behaviour is an opportunity for positive change and offers a chance to boost more resilient and sustainable operations in the area of financial contracts concluded at a distance. For the EESC, the rules governing publicity must be clear and harmonised with other related operations that can impact on consumers. Consumer rights and obligations must be guaranteed.
- 4.5 The EESC believes that this proposal is in line with the European Charter of Fundamental Rights and therefore with the principle of proportionality with respect to the sanctions imposed on companies and consumers in this area. The EESC considers this a very positive point that must be highlighted. The EESC considers it to be a fundamental principle that the severity of sanctions should reflect the severity of the offence, in this case the infringement of consumer protection as defined under the proposal for a Directive.
- 4.6 For the EESC, the need to ensure a balanced approach regarding the right to ask for human support concerning financial contracts concluded at a distance is paramount. We still have a large portion of the population that requires this kind of support, and banks and institutions must be aware of these limitations. This must be addressed when institutions make decisions regarding investment and the maintenance of certain "physical" services.
- 4.7 The EESC believes that not only banks but all financial institutions must invest in education and training systems in order to support their employees in providing customer support. Financial services at a distance are very important, but so too are the human resources that provide support in this area. Employees must have the right skills and training in order to guide customers. Finally, even when AI is used to support services, a "human touch" is needed in order to interact with customers more effectively.

5. **Impact assessment – the role of civil society**

- 5.1 The EESC once again draws the attention of the Commission and the Member States to the opportunity to involve the social partners and organised civil society in the process of communicating on and implementing this Directive. Given not just their knowledge, but in particular their presence "on the ground", civil society organisations can help ensure the right communication, for example in order to reach fundamental parts of society that live in rural areas or have difficulty accessing mass information channels. The civil society organisations that are represented at the EESC can support the correct implementation of the proposal in order to achieve better results and boost the involvement of citizens in the process.

6. **Financial services and the Resilience and Recovery Facility – the way forward**

- 6.1 The Recovery and Resilience Facility (RRF) is the main pillar of the European recovery plan, Next Generation EU, designed to provide financial aid to Member States in order to combat the economic and social effects of the COVID-19 pandemic and make the European economy more resistant to future shocks. The EESC also believes that, when it comes to improving the system, the Member States could make proper use of this mechanism in order to facilitate people's lives in this area.
- 6.2 The need to invest in digital and financial literacy in order to boost consumer education and protection is paramount. Developing the digital and financial capabilities of consumers is essential in order to achieve the objectives of the Digital Agenda, including the development of a performing market and increasing consumer protection. The EESC understands the value of data protection and supports the right of consumers to a full guarantee of this protection. The EESC is convinced that a balanced development of distance marketing of financial products can only succeed if the Member States allow enough resources to address such challenges and promote confidence in the online trade in financial services, and if they measure progress in this field and report to the Commission, which will assess the outcome and recommend best practices.

Brussels, 21 September 2022.

Christa Schweng
The president of the European Economic and Social Committee
