



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion 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) 204 final}.

The aim of the proposal, as underlined in the Bundesrat's Opinion, is to promote the provision of financial services sold at a distance in the internal market while ensuring a high level of consumer protection.

The Commission is pleased that the Bundesrat shares the Commission's view according to which the safeguarding of the 'safety net' was required because of the rapid changes in the financial services market. Likewise, the Commission notes with satisfaction that the Bundesrat welcomes the Commission's approach of transferring the rules on financial services contracts sold at a distance into the Consumer Rights Directive (Directive 2011/83/EU) and takes note of the request to further condense thematically the related consumer protection rules in unified legal acts.

The Commission appreciates that the Bundesrat supports the innovative approaches set out in the proposal (the provisions on online fairness and the introduction of a withdrawal button) and acknowledges the wish to expand such features to other consumer contracts. In this light, it is worth highlighting that the Commission has recently undertaken a new initiative that is related to the Bundesrat's wish. In spring 2022, the Commission launched a 'Fitness Check of EU consumer law on digital fairness', which is an evaluation that will run from 2022-2024 to determine whether the existing key horizontal consumer law instruments remain adequate for ensuring a high level of consumer protection in the digital environment.

The Commission understands the concern expressed by the Bundesrat regarding information overload for consumers. In this light, the proposal sets out rules on when and how the information is to be provided to the consumer.

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With regard to how the information is to be provided to the consumers, the Commission believes that information requirements should be adapted to take into account the technical constraints of certain media while, at the same time, not overburdening the consumer. Without being prescriptive, the proposal mentions techniques, such as ‘layering’ or the ‘table of contents’ approach (see Article 16a(4) and Recitals 21 and 22), through which financial service providers may provide information to consumers, without overburdening the latter.

The proposal also regulates when the information is to be provided to the consumers. The Commission and the Bundesrat share the view that sufficient time is required between the provision of the information by the financial service provider and the actual signature; the difference concerns the duration between the provision of the pre-contractual information and the actual signature. The proposal establishes one day, while the Bundesrat’s Opinion calls for a minimum of three days. The Commission believes that in today’s fast moving economy, where financial contracts at a distance are mostly concluded online, three days might be excessive and might hamper the provision of financial services within the internal market.

The Commission notes the request of the Bundesrat for the creation of a Model Form concerning the right of withdrawal and the reference made to Annex I of Directive 2011/83/EU. In this regard, two points are worth mentioning. First, the Model Form laid down in Annex I of Directive 2011/83/EU is just one instance of how consumers may exercise their right of withdrawal; thus, its use is voluntary. Second, neither the evaluation of Directive 2002/65/EC, nor the impact assessment accompanying the proposal have evidenced particular concerns as regards the exercise of the right of withdrawal or the need for the creation of a Model Form for financial services contracts sold at a distance.

The Commission is aware of the growing litigation before German courts concerning the right of withdrawal in the context of consumer credit agreements. However, in the proposal, unlike Directive 2008/48/EC on credit agreements for consumers, the ‘right of withdrawal shall not apply for those contracts whose performance has been fully completed by both parties at the consumer’s express request before the consumer exercises the right of withdrawal’.

The Commission takes note of the request for clarification concerning the application of Article 16b(6), namely ‘whether the national provisions on the right of withdrawal in mortgage credit agreements also override the subsidiary default provision in the Directive’. In this light, the Commission has paid particular attention to ensuring that the demarcation between the application of the proposal and the product-specific legislation (for instance Directive 2014/17/EU – the ‘Mortgage Credit Directive’) is as legally clear as possible. The Commission would like to draw the Bundesrat’s attention to the approach laid down in the proposal, which aims to clarify the line of demarcation between the application of the proposal and the product-specific legislation. First, Article 3(2) of Directive 2011/83/EC is applied to financial services sold at a distance: thus, ‘if any provision of (the Proposal) conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall

apply to those specific sectors'. Second, Article 16b(6) provides that 'where another Union act governing specific financial services contains rules on the exercise of the right of withdrawal, only the respective provisions of those other Union acts should apply to those specific consumer financial services'; Recital 13 provides a number of examples in this context, in particular, with respect to the right of withdrawal as laid down in the Mortgage Credit Directive and explicitly states that, when Member States exercise the discretion offered by Article 14(6) of Directive 2014/17/EU, 'the rules on the right of withdrawal under (the proposal) should not apply'.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council.

The Bundesrat's Opinion has been made available to the Commission's representatives in the negotiations of the co-legislators, the European Parliament and the Council, and will inform these discussions.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Vice-President*

*Didier Reynders
Member of the Commission*