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New framework on financial services contracts concluded at a distance

On 28 November 2023, Directive 2023/2673 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC, was finally published in the Official Journal of the EU.

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1. Background

Directive 2002/65/EC laid down rules at EU level with respect to the distance marketing of consumer financial services. Since its adoption, the EU has introduced several sector-specific pieces of legislation that have led to significant overlaps with Directive 2002/65/EC. Hence, digitalisation and rapid technological developments since then have not only exacerbated these overlaps but also brought new challenges for consumer protection with regard to financial services contracts concluded between a consumer and a trader at a distance.

Now, and similar to Directive 2002/65/EC, Directive 2011/83/EU has defined rules on pre-contractual information and on withdrawal rights for certain consumer contracts concluded at a distance, notably for goods and provisions. However, the scope of Directive 2011/83/EU does not cover financial services, i.e. it does not apply to financial services contracts concluded at a distance, which are now included in the scope of Directive (EU) 2023/2673.

It is noteworthy that due to the specific nature and complexity of consumer financial services, it was deemed inappropriate to apply all the provisions of Directive 2011/83/EU to consumer financial services contracts concluded at a distance. For this reason, a dedicated chapter with rules applicable to consumer financial services contracts concluded at a distance has now been added into the amended Directive 2011/83/EU to ensure the necessary clarity and legal certainty.

In this respect, financial services such as a housing savings' account or a consumer credit agreement should now benefit from the provisions of the amended Directive 2011/83/EU when they are concluded at a distance.

In this context, in order to ensure high-level consumer protection and to achieve full harmonisation between different EU legislation, the European Commission has proposed to repeal Directive 2002/65/EC and to insert the relevant new provisions directly into an amended version of Directive 2011/83/EU relating to financial services contracts concluded at a distance.

2. Key aspects of the amendments to Directive 2011/83/EU on consumer rights

The amended Directive 2011/83/EU should thus serve as a safety net for financial services contracts concluded at a distance that are not yet covered by sector-specific EU legislation. Therefore, the amended Directive 2011/83/EU does not amend or modify any existing sectoral legislation at EU level (e.g. MiFID II, IDD or Solvency II), but simply completes them in that respect.

Where an EU act on specific financial services provides for rules on one aspect regulated by the amended Directive 2011/83/EU but does not establish rules on other aspects, the other provisions of the amended Directive 2011/83/EU should be applied. For example, if a sector-specific EU directive provides, for instance, for rules on pre-contractual information and not on the right of withdrawal, the trader should then provide for information on the latter in accordance with the amended Directive 2011/83/EU.

Particular attention should also be paid to the scope of the amended Directive 2011/83/EU in that it will apply only to the initial agreement where the financial services contract concluded at a distance includes an initial service agreement, but which is then followed by successive operations or a series of separate operations of the same nature performed over time.

While imposing almost the same pre-contractual information requirements on the trader as was the case for Directive 2002/65/EC, the amended Directive 2011/83/EU also specifies appropriate provisions in relation to new products which have appeared since then, in particular in the online environment.

In this context, it is worth highlighting that when it comes to the financial services contracts concluded at a distance by means of an online interface, the amended Directive 2011/83/EU requires the trader to put in place a clearly visible withdrawal function, using which it is as easy to withdraw from the contract as it is to conclude it. This should allow the consumer to find and access the withdrawal function in an easy and simple manner and the trader should acknowledge receipt of the withdrawal without undue delay.

It is also noteworthy that the amended Directive 2011/83/EU provides for additional consumer protection with regard to online interfaces, so that traders must not design, organise or operate their interfaces in a way that deceives or manipulates the consumers.

In addition, Member States should also ensure that traders provide adequate explanations to the consumer on the proposed financial services contracts concluded at a distance. In view of this, the traders should provide the required pre-contractual information free of charge, as well as the essential characteristics of the proposed contract and the specific effects which such contract may have on the consumer, including the consequences of default or late payment.

In essence, the new EU legislative framework on consumer financial services contracts concluded at a distance will have a direct impact on the internal processes, obligations and contractual documentation requirements for financial service providers each time these contracts are not governed by other sector-specific EU legislation.

3. Timeline and next steps

Directive (EU) 2023/2673 will enter into force on the twentieth day following its publication.

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2023/2673 by 19 December 2025. They shall apply these measures from 19 June 2026 and Directive 2002/65/EC is repealed with effect as from the same day.

If you require any assistance or advice regarding the new directive on financial services contracts concluded at a distance, contact our experts from [Banking & Financial services practice](#)

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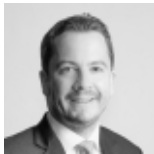
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