

Towards New EU Consumer Protection Rules for Online Financial Services

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24 August 2022



Brussels, 11.5.2022
COM(2022) 204 final
2022/0147 (COD)

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

(Text with EEA relevance)

{SEC(2022) 203 final} - {SWD(2022) 141 final} - {SWD(2022) 142 final}

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Context of the reform

Key provisions

Outlook

COM(2022) 204 final

Context of the reform

- EU Directive 2002/65/EC on distance marketing of financial services is now 20 years old
- Changing business models in retail finance
- Changing regulatory landscape in Europe

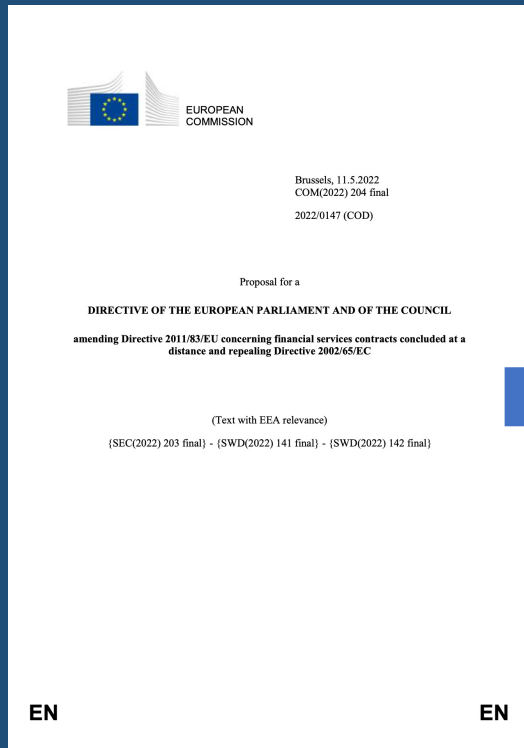
Changing business models in retail finance

- Rapid digitalization of financial services
- New players: New non-bank players entering the market (e.g. fintech, digital platforms)
- New products: P2P lending, crowdfunding, buy-now-pay-later, robo advisors, crypto assets

Changing regulatory landscape in Europe

- Consumer Credit Directive (2008)
 - Mortgage Credit Directive (2014)
 - 2nd Payment Services Directive (2015)
 - Crowdfunding Regulation (2020)
-
- Proposal for a Regulation on Markets in Crypto Assets (2020)
 - Proposal for a new Consumer Credit Directive (2021)
-
- The diagram consists of a list of regulatory changes on the left and callout boxes on the right. The callout boxes are connected to the list items by lines that form a comb-like shape. The callout boxes contain the following text:
- Prevention of irresponsible lending and borrowing behavior by market participants
 - Opening the market for fintechs
 - Lending / investment based crowdfunding
 - Token Economy
 - Buy-Now-Pay-Later, P2P Lending

Changing regulatory landscape in Europe



Policy options:

1. Repeal of Directive 2002/65/EC
2. Comprehensive revision
3. Integration of rules on distance selling of financial services into Consumer Rights Directive 2011/83/EU

Full legal harmonization



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Context of the reform



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Pre-contractual information duties

- Clearer rules on what, how and when information is to be provided to the consumer (Art. 16a)
 - Identity of the trader and contact details
 - Main characteristics of the financial service
 - Price (including information on price personalization)
 - Description of the risk-reward profile
 - Existence of a right of withdrawal and practical instructions for exercising the right of withdrawal
 - Contractual clauses on applicable law
 - ...

Shorter list of information items for contracts concluded via telephone

Pre-contractual information duties

Directive 2002/65/EC: Information shall be provided „**in good time**“ before the conclusion of the contract.

- Information shall be provided at least **one day before** the consumer is bound by the distance contract (Art. 16a(3))
 - “Where the information [...] is provided less than one day before the consumer is bound by the distance contracts, Member States shall require that trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the contract and of the procedure to follow for withdrawing [...].”
 - “That reminder shall be provided, at the latest, one day after the conclusion of the distance contract.”

What happens when the trader violates Art. 16a(3)?

Pre-contractual information duties

- Information shall be made available on a "durable medium" (e.g. e-mail) "in a clear and comprehensible manner" and "easy to read"
- Key information (identity, main characteristics, price, right of withdrawal) must be provide upfront
- Other information can be provided in "layers" (e.g. pop-ups, layered links)
 - "In case the trader decides to layer the information it shall be possible to print the information [...] as one single document".

- Focus on **how** information is provided
- Trend towards "**design duties**" for websites & apps

Pre-contractual information duties

Klarna.

v1.0.1 Published on May 31, 2022 [Download as PDF](#)

Pay Later in 30 days Terms and Conditions

Thank you for choosing to shop with Klarna.

This is a credit agreement between you and us. When we use 'us', 'we' or 'our' in this document, we mean Klarna Bank AB UK Branch. When we use 'you' in this document, we mean anyone who has bought something using Pay Later in 30 days ("Pay Later") with Klarna.

1. Who can use Pay Later?

You must be a UK resident, over 18 years old and have a valid payment card to use Pay Later. When we say 'valid payment card', we mean the card must be in your name, and must not have expired. You should also make sure the card you use has enough money available to cover your payment.

Pay Later is a credit product. It's our decision whether or not we start a credit agreement with you.

2. How do I Pay Later?

With Pay Later, you can pay for something you buy up to 30 days from the order placement or shipment of your goods or when services you have purchased become available. We will send you a payment reminder with details on how to make payment to us directly. If you'd like to pay off your balance before the 30 days is up you can make a payment early through the Klarna App by paying by card immediately.

ON THIS PAGE

1. Who can use Pay Later?
2. How do I Pay Later?
3. When it's time to pay, which cards does Klarna accept?
4. What if something goes wrong?
5. What happens if I cancel my purchase?
6. What happens if I fail to pay for my purchase?
7. Will using Klarna affect my credit score?
8. How does Klarna use my personal data?
9. How do I make a complaint?
10. Transfer of rights
11. Klarna

www.klarna.com

Table of contents with links

Clear and comprehensible language

Printable as a single document

Right of withdrawal

- Consumers have 14 calendar days to withdraw from the contract without any penalty and without giving any reason (Art. 16b)
- Withdrawal period starts not before:
 - 1) the conclusion of the contract
 - 2) the consumer receives terms & conditions and pre-contractual information

Does the violation of the information duties lead to an “**eternal right of withdrawal**”?

Possible solution: Right of withdrawal expires after **14 days + 12 months** (Art. 10 Consumer Rights Directive 2011/83/EU)

Right of withdrawal

- For contracts concluded by electronic means, traders must provide a withdrawal button on their electronic interface (Art. 16b(5))

Withdraw from Contract

Trend towards “**design duties**” for websites & apps

Order with obligation to pay

Order button (Art. 8(2) EU Consumer Rights Directive)

Cancel Subscription

Cancellation button (§ 312k German Civil Code)

Adequate explanations

- Traders must provide “adequate explanations” to consumers (Art. 16d)
- ...also when using “online tools such as live chats, bots, roboadvice, interactive tools or similar approaches”
- “Member States shall ensure that, in case the trader uses online tools, the consumer shall have a right to request and obtain human intervention”

Right to speak to a human being

Design of online interfaces

- Traders must “not use the structure, design, function or manner of operation of their online interface in a way that could distort or impair consumers’ ability to make a free, autonomous and informed decision or choice” (Art. 16e)

Regulation of “choice architectures”

How does this relate to the general rules on unfair commercial practices?

Ban on deceptive design patterns (“dark patterns”)

Enforcement

- Stronger penalties for widespread cross-border infringements
- Maximum penalty of at least 4% of annual turnover in the Member States concerned by the infringement



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- Practical impact for existing business models will be limited
- Product specific rules will take precedence
- “Safety net” function
 - Financial products not covered by specific rules (e.g. personal pensions, crypto assets, P2P lending)
 - New financial products
 - Proposal for a Regulation on Markets in Crypto Assets
 - Proposal for a new Consumer Credit Directive

Outlook

The new rules for online financial services could be a source of inspiration and model for review of general consumer law

European Commission | Ref. Ares(2022)3718170 - 17/05/2022

**CALL FOR EVIDENCE
FOR AN EVALUATION / FITNESS CHECK**

This document aims to inform the public and stakeholders about the Commission's work, so they can provide feedback and participate effectively in consultation activities. We ask these groups to provide views on the Commission's understanding of the problem and possible solutions and to share any relevant information that they may have.

TITLE OF THE EVALUATION	Fitness Check of EU consumer law on digital fairness
LEAD DG – RESPONSIBLE UNIT	DG JUST E2
INDICATIVE TIMETABLE	Q2 2024
ADDITIONAL INFORMATION	https://ec.europa.eu/info/law/law-topic/consumer-protection-law_en

This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the document, including its timing, are subject to change.

A. Political context, purpose and scope of the evaluation

Political context

The Commission announced in the [New Consumer Agenda](#) of 13 November 2020 that by 2022, after updating its guidance documents on the Unfair Commercial Practices Directive and the Consumer Rights Directive, it will analyse whether additional legislation or other action is needed in the medium-term in order to ensure equal fairness online and offline. The new [Commission Notices](#) on the interpretation and application of the directives were published in the Official Journal on 29 December 2021. As a follow-up, the Commission is now launching a Fitness Check of EU consumer law on digital fairness in order to determine whether the existing key horizontal consumer law instruments remain adequate for ensuring a high level of consumer protection in the digital environment.

Digital fairness – Fitness Check on EU Consumer Law

- Withdrawal button
- Layered information
- Algorithmic contracting (chatbots)
- Crypto assets

감사합니다

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