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Ms. Lenka Dupáková
Chair of the Council's Working Party on
Consumer Protection and Information

Members of the Council's Working Party on
Consumer Protection and Information

Ms. Blanca Rodriguez Galindo
Acting Director, Directorate E Consumers
DG JUST, European Commission

Ms. Daniela Bankier,
Head of Unit E1
DG JUST, European Commission

Brussels, 16 December 2022

Re: Concerns on extension of withdrawal button to all distance sales without proper impact assessment

Dear Ms. Dupáková, dear Members of the Working Party, dear Ms. Rodriguez Galindo, dear Ms. Bankier,

Our associations represent a broad coalition of SMEs, retail, technology, e-commerce and omnichannel companies of different sizes.

We are writing to you in the context of the discussions on the proposal amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC. In particular, we are concerned about the introduction of a withdrawal button for all distance contracts concluded by means of an online interface.

We ask you to consider the following concerns, to ensure the introduction of the new provisions does not have far-reaching negative consequences for consumers and companies across Europe.

- The European Commission is currently in the process of conducting an extensive fitness check of the existing EU consumer law framework. This includes an evaluation of the Consumer Rights Directive (CRD). The fitness check is assessing whether consumers are sufficiently protected and can effectively exercise their rights online. While the process is still ongoing, we consider the fitness check the appropriate venue for further discussions on issues such as cancellations, withdrawals, and returns. We were therefore highly surprised to learn that the amendments to the CRD within the context of negotiations on the financial services contracts concluded at a distance, are expanding the scope of the introduction of a withdrawal button

beyond solely financial services contracts to all distance contracts concluded by means of an online interface.

- We strongly support the principles of 'better regulation', which stress the importance of concepts such as an evidence-based, participative, and transparent approach to law-making. We believe that a significant change to EU legislation, such as the proposal for a "withdrawal button", should be subject to a proper process. In particular, there needs to be a thorough impact assessment, reviewing the impact on traders, especially on SMEs, which will likely be financially and technically burdensome. Furthermore, also the effect on consumers and the required implementation time needs to be assessed. Additionally, considering that the proposal initially targeted distance contracts of financial services, relevant stakeholders have likely not yet have been consulted on the implications of the extended scope. The undersigned associations therefore urge policymakers to maintain the proposal's initial focus on financial services and to include the assessment of a 'withdrawal button' in the Commission's extensive fitness check of EU consumer law.
- Regarding the application in practice of the proposal, it is important to note that the suggested 'one-size-fits-all' approach is likely not workable due to existing legal limitations on withdrawing from a contract (e.g., specific exemptions on hygiene products, products made to consumer's specifications, services delivered fully or in part before the withdrawal period ends etc.). It is therefore crucial to carefully consider the wider regulatory context before proceeding with this proposal.
- The proposal also raises some security concerns. Traders shall allow the consumer to make the withdrawal statement by providing only the name and contract identification as identifiers. Traders are not supposed to ask for log-in and passwords or implement other security layers (e.g., confirmation links, one-time passwords, etc.). This makes it easier for bad actors or bots to abuse the interface for illegitimate withdrawals.
- The proposal also insufficiently takes into account the different types of distance contracts available. For instance, one contract does not always equal one product or service. Instead, within one contract a consumer may purchase multiple products. It should be clarified how contracts containing several items should be dealt with. For distance contracts that do not involve digital services, withdrawal requires the actual, additional step of sending back the purchased item. The draft law does not include any mechanism for the customer to easily start the returns process, which is the essential part of any withdrawal in the case of sales of goods. Finally, some countries have national rules on cancellation buttons. Any new rules should ensure that the difference between a cancellation button and a withdrawal button are sufficiently clear.

The signatories of this letter are supportive of the Commission's efforts on the fitness check of the current EU consumer protection framework and urge policymakers to refrain from introducing a new withdrawal button before finalisation of the ongoing evaluation process.

We thank you for your consideration of our concerns and are at your disposal to provide any additional information in written form or in a meeting.

Sincerely,

Computer & Communications Industry Association (CCIA Europe)
DOT Europe
Ecommerce Europe
EuroCommerce
European Tech Alliance (EUTA)
Independent Retail Europe
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