

Brussels, 21 February 2023

Joint Statement: Businesses reject the rash extension of the withdrawal button to all distance contracts through rushed negotiations

In our role of EU trade associations representing the interests of businesses of different sizes (including SMEs), from various sectors (retail, technology, e-commerce and omnichannel), we have been closely following the recent developments concerning the proposal to introduce a “withdrawal button” for all transactions concluded at a distance by means of an online interface. While the industry widely supports the general objective to enhance the possibilities for consumers to exercise their withdrawal right, we believe that this could be achieved through less prescriptive, more workable provisions.

Although these discussions have taken place in the context of the proposal amending Directive 2011/83/EU (CRD) concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC, their impact will go well beyond the boundaries of the financial sector. This is due to new language added at a later stage during the negotiations that would extend the obligation to display a withdrawal button for all “distance contracts for other goods and services where Union law provides a right of withdrawal”. Therefore, the vast majority of B2C industry with online sales activities, regardless of a company’s size and sector of activity, would be concerned by such an obligation.

The undersigned associations strongly support the principles of ‘better regulation’, which stress the importance of concepts such as an evidence-based and transparent approach to law-making. However, we believe that those key foundations of European policymaking are lacking in this legislative process. The discussion on financial services contracts is being used as a vehicle to amend the CRD horizontally, without proper impact assessment and consultation of stakeholders. The European Commission is currently in the process of conducting an extensive fitness check of the existing EU consumer law framework and we consider the latter a more appropriate venue for further discussions on this issue and strongly urge policymakers to take the time to properly assess all relevant arguments before reaching hasty conclusions.

In this statement, the signatories aim to present our key concerns on the proposed extension of the “withdrawal button” to all distance contracts.

Key points

- 1. Foster a principle-based approach to improve consumers’ awareness of the right of withdrawal**
- 2. Avoid one-size-fits-all, prescriptive measures for the implementation of the right of withdrawal**
- 3. Leave businesses sufficient leeway to develop their own withdrawal and return policy fitting to their business model and the consumers they serve**

Foster a principle-based approach aiming to improve consumers' awareness of the right of withdrawal

The Consumer Rights Directive 2011/83/EU mandates a right of withdrawal of 14 days to be exercised by the consumer after concluding a distance contract. It leaves it to the discretion of the trader to inform the consumer of the conditions, time limit and procedures for exercising the right of withdrawal. While the CRD provides for a model withdrawal form, it also prescribes that "Member States shall not provide for any formal requirements applicable to the model [...]". The flexibility of these provisions has allowed businesses to develop and adapt their withdrawal and return policy according to their business model, providing consumers with the most convenient withdrawal/return procedure adapted to the type of product or service they offer. While the undersigned associations support the objective to raise awareness of the right of withdrawal among consumers, we believe that prescriptive provisions, such as a withdrawal button applied to all distance contracts, will not be apt to catch the reality of the entire business landscape and entail unintended implications.

The Impact Assessment for the Financial Services Directive states that in certain market segments, consumers' awareness of their rights in respect of cooling-off periods after engaging in a distance purchase tends to be low¹. To mitigate this, we would strongly support making information about the existence of the withdrawal right more visible, accessible and straightforward. This could be achieved for instance by more prominently displaying not only the right of withdrawal, but also the instructions on how to exercise the withdrawal right.

Avoid one-size-fits-all, prescriptive measures to ensure a well-functioning withdrawal process for businesses and consumers

Regarding the application in practice of the proposal, it is important to note that the suggested 'one-size-fits-all' approach would not be workable due to the complexity of the digital commerce sector.

The right of withdrawal is exercised on a daily basis on a large scale, and is handled quickly and easily by companies. There is no evidence of a problem for consumers to exercise the right of withdrawal in online commerce that would justify the introduction of a mandatory withdrawal button. For the sale of goods, many reputable businesses are already doing everything that is reasonably feasible to facilitate for the customer to exercise its right of withdrawal. For instance, retailers often provide consumers with instructions in the order confirmation or a pre-printed return slip to facilitate the return of the product, including the right of withdrawal. Additionally, many businesses have extended the withdrawal period by offering a more generous free return policy, going beyond the legal obligations stated in the Consumer Rights Directive. Whilst most traders are open to discuss feasible means to facilitate withdrawal (which in practice is tied to the return policy), they raise technical concerns regarding a one-size-fits-all withdrawal button. To technically enable companies to offer the withdrawal button exclusively during the 14-day withdrawal period, it may lead to an indirect requirement for consumers to create a customer account. Only a customer account would allow for the 'individualised' display of the button linked to the consumer's withdrawal period. Moreover, the obligation to introduce the button on the same interface as where the contract was concluded, does not consider that consumers can also partially withdraw from a contract, if they wish to return only some of the purchased products. It also should be noted that traders cannot control the interface when they sell their products or services through an intermediary such as a marketplace or a social media network or via emerging sales channel such as live video shopping events.

Concerning the application to services, it should be considered that there are many different types of service providers. For instance, some services are subscription based, while others are based on single purchases. There are also differences in terms of usage periods by consumers. Some services are used by consumers for multiple years, others only are used for a few days. Additionally, some services are sold as content packages for which the contract starts immediately after its conclusion. Certain services are directly available to the consumers, while others require installation or set-up via hardware. Finally, for services that are mainly used through a mobile app, it should be considered that the trader cannot always bear the responsibility for the withdrawal button. These examples highlight that the implications of a mandatory withdrawal button would also severely impact various services, but also

¹ Impact Assessment Report accompanying the document: Proposal for a Directive of the European Parliament and of the Council. P. 15.

show that a one-size-fits-all button for the sale of goods and services is not appropriate in such a diverse landscape.

The signatories would therefore suggest a more differentiated approach to allow for a withdrawal method best suited for the type of business, and good or service offered to the consumer.

Leave businesses sufficient leeway to develop their own withdrawal and return policy fitting to their business model, while guaranteeing easy withdrawal procedures

The EU legislative framework for the exercise of the right of withdrawal fostered the set-up of different functions to implement the withdrawal right. The discretion granted to traders with regards to withdrawal and return processes spurred especially smaller businesses to develop solutions more tailored to their inhouse capacity, while ensuring compliance with EU consumer protection legislation. The introduction of a withdrawal button, which would force businesses to invest in the set-up of IT structures and maintenance systems, would threaten the existence of less costly, more suitable withdrawal functions.

We believe there are often easier solutions for the consumer to exercise their withdrawal right (and submit their withdrawal statement) than via the use of a button. For instance, via a withdrawal form, instructions provided via email, or clear information provided on the website. These methods satisfy the overall objective of offering a simple and understandable withdrawal method. Furthermore, the information required to identify the contract varies across companies. Many websites provide withdrawal processes through logged-in environments, which do not require the client to provide any additional information. In contrast, in some cases, further information is required to ensure there are no illegitimate withdrawals and avoid security risks. Companies should be free to design the process granting an easy withdrawal according to the specificity of their service and interface. Moreover, considering all the different types of consumer profiles traders serve, it is essential that there is the necessary flexibility for businesses to be able to offer the best suited means and methods to their consumers to exercise their withdrawal rights. We would strongly suggest allowing other solutions that enable the consumer to withdraw from a contract in a very easy manner as an alternative to the button.

Conclusion

In general, the signatories would welcome a harmonised, principle-based approach to improving consumers' awareness of the right of withdrawal. Nevertheless, we would invite policymakers to leave traders sufficient leeway to align with such a principle, considering the wide range of business models, their size and technical capabilities as well as the vast offer of products and services available on the Single Market. To allow sufficient time to evaluate the impact of any changes, we suggest moving this discussion, including a proper impact assessment and consultation of stakeholders, into the ongoing refit process of EU consumer law framework.

The undersigned associations would be eager to participate in the co-creation of fit-for-purpose instruments to improve consumers' understanding of the right of withdrawal. We remain open to engage with policymakers and any other relevant stakeholders to reflect upon voluntary measures and industry commitments on the topic.