

Withdrawal button in financial services contracts Directive

The Federation of European Data and Marketing (FEDMA) strongly supports the general objective of the Directive on financial services concluded at a distance (DFSD) to enhance the possibilities for consumers to exercise their withdrawal right, as well as improve their awareness of such functionality. However, FEDMA would like to raise serious concerns about the proposed extension of the withdrawal button to all contracts for goods and services concluded at a distance in Recital 25 and Article 11. As a vertical piece of legislation, the introduction of such a button reflects the specificities of financial services and, as part of the Commission's proposal, it is the result of a thorough analysis and impact assessment in line with the principle of better regulation. Conversely, FEDMA believes that the extension of the withdrawal button to all goods and services would:

- **seriously impact all businesses** that conclude distance contracts, severely undermining subscription-based models and pricing.
- **undermine the vertical nature** and intended scope of the Directive. It appears that the revision of this legislation is being used as a vehicle to amend the Consumer Rights Directive horizontally, without any prior necessary impact assessment and consultation with relevant stakeholders on the introduction of a cancellation button. The lack of sufficient evidence is also making other EU countries such as Luxembourg¹ hesitate in adopting a similar measure as currently only Germany has implemented a cancellation as of July 2022.
- **override the European Commission's ongoing fitness check on EU consumer law** which is also looking at the possibility to introduce a similar withdrawal button. As an evidence-based exercise, including a thorough stakeholders' consultation, FEDMA believes that the Commission's fitness check represents a more appropriate venue for discussions on this issue.
- **go beyond the principle of freedom of contracts** by determining the specific means through which contracts should be terminated.
- **complicate the existing withdrawal system by adding a further communication channel**. Companies already provide withdrawal options through different means: Article 6(1)(c) of Directive 2011/83/EU on consumer rights, already mandates the trader to provide the consumer with information on the means of communication "[...] to enable the consumer to contact him quickly and to communicate with him effectively [...]". Some of FEDMA's members operating in Germany, where such a button has

¹ [Answer of Mrs. Paulette Lenert, Minister of Consumer Protection, to the parliamentary question n° 6485 of July 14, 2022 of Mrs. Viviane Reding, Member of Parliament, concerning the cancellation of an online contract.](#)

already been implemented, report that consumers prefer to rely on traditional channels (e.g., by calling or by emailing) for terminating their subscriptions.

- **hinder the identification of the user** when the conclusion of a contract takes place without any logging in to the website. As a result, companies which do not require a log-in will not have the possibility to verify whether the request to withdraw from the contract has been activated by the customer or someone else, unless they demand additional personal information from the consumer. However, on this issue, German courts have requested companies to confirm the cancellation but without installing any kind of double opt-in process as it would likely go against the principle of data minimization.
- **add an additional technical layer for companies** that will have to plug in the cancellation request in their back-office systems. Where the cancellation button is not linked to a log-in enabling to automatically terminate the contract, companies will need to manually follow up the request as for any other means of communication already provided to the consumer, but without any meaningful benefit to the consumer.

FEDMA agrees that it must be as easy to terminate/withdraw from a contract as it was to enter it, but we believe that a technical layer providing the consumer with information, rather than a “termination button”, is more suitable. In this context, there are appropriate procedures and modalities designed by EU law to revise its legislative framework taking into account all the stakeholders involved. FEDMA advocates for:

- preserving Recital 25 and Article 11 as the per European Commission's proposal, thus circumscribing the withdrawal button only to financial services, or
- referring to a withdrawal “function” rather than a withdrawal “button”, or
- moving this important discussion into the ongoing refit of the EU Consumer law framework, on the basis of the results of an appropriate impact assessment as well as consultations with relevant stakeholders.
