



Electronic Money Association

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Eric Ducoulombier
Head of Unit B.3 DG FISMA
European Commission
Rue de Spa 2 / Spastraat 2
1000 Bruxelles / Brussel

Via webform

8 July 2022

Dear Sirs

Re: Distance marketing of financial services to consumers – review of EU rules

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. Our members are listed at the end of this letter.

We have reviewed the European Commission's proposal for a directive. We are generally supportive of repealing the Distance Marketing Directive (EU) 2002/65/EC. We also support the Commission's proposal to retain the consumer's 14-day right to withdraw from the contract and insert this provision into the Consumer Rights Directive (EU) 2011/83/EU as we agree it is one of the few terms of the Distance Marketing Directive that remains relevant.

In relation to the new proposed directive, we have the following comments for your consideration:

Right to withdraw reminder

Please note that we disagree with proposed new Article 16(a)(3) which provides:

The trader shall provide the information referred to in paragraph 1 at least one day before the consumer is bound by any distance contract.

(3) *When the information referred to in paragraph 1 is provided less than one day before the consumer is bound by the distance contract, **Member States shall require***

that the trader sends a reminder, on a durable medium, to the consumer of the possibility to withdraw from the distance contract and of the procedure to follow for withdrawing, in accordance with Article 16b. That reminder shall be provided to the consumer, at the latest, one day after the conclusion of the distance contract.

We disagree that this reminder is of any benefit to the consumer or the service provider. Consumers will already be provided with a contract containing 22 separate information disclosures pursuant to article 16(a)(1). The consumer will not appreciate receiving another, separate disclosure on a durable medium. This is not efficient and conducive to a positive consumer experience; nor has the Commission proven in the course of the Impact Assessment or the behavioural study published in 2019 that receiving another document would make any considerable impression on the consumer or otherwise give effect to their rights.

Please note that the consumer will be presented with the “prominent and permanently available” Withdrawal Button in their online account. They will see this clearly and will be reminded of their right to withdraw each time they visit the online account. We therefore consider another disclosure on a durable medium will have little effect as it will lose significance amongst the other 22 disclosures made prior to the consumer’s entering into the services contract. The consumer will already be well aware of their right to withdraw pursuant to the prominent Withdrawal Button.

Durable medium

New proposed Article 16(a)(4) provides:

*(4) The information referred to in paragraph 1 shall be made available to the consumer on a **durable medium** and laid out in a way that is easy to read, using characters of readable size [...]*

This new article contains the ubiquitous consumer protection requirement to disclose information to the consumer on a durable medium. The meaning of “durable meaning” should be updated to reflect technological developments and new consumer habits. Updating the Distance Marketing Directive to reflect technology was one of the central reasons for the EC carrying out this review.

Please note the EBA’s Opinion on disclosure to consumers of banking services through digital means under Directive 2002/65/EC which provides:

*(13) The provisions and definitions in the DFMSD, such as the definition of ‘durable medium’, are generic and should be reviewed and amended such that they **keep track of technological evolution**, e.g. are suitable for the marketing via digital means.*

We consider that “keeping tracking of technological evolution” as anticipated by the EBA’s opinion includes providing information through an app or a dedicated online interface (e.g. an online account) as a means of providing information on a durable medium. The times have changed and it is not beneficial to consumers to keep the rules that do not reflect how the consumers behave. For example, consumers today will use their app notifications the way letters, or even emails, used to be used a few years ago. Consumers have access to their online interface with all the



information about the transactions in one place and use the interface to keep informed. Notifications sent to these online interfaces/accounts should be treated as a durable medium.

Please let me know if you have questions or wish to discuss further with the EMA.

Yours sincerely,

A handwritten signature in black ink that reads 'Thar Sabri'. The signature is written in a cursive style and is underlined with a long, sweeping horizontal line.

Dr Thar Sabri
Chief Executive Officer
Electronic Money Association

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[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
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