

Proposal for a directive

AMENDMENTS BY PARLIAMENT*

to the Commission proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights, ***amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council***

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ***on the Functioning of*** the European ***Union***, and in particular Article ***114*** thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ***ordinary legislative*** procedure³,

Whereas:

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

¹ OJ C 317, 23.12.2009, p. 54.

² OJ C 200, 25.8.2009, p. 76.

³ Position of the European Parliament of 2011.

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises¹ **and** Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts² lay down a number of contractual rights for consumers.
- (2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those *two* Directives by *a* single Directive. This Directive should accordingly lay down standard rules for the common aspects *of distance and off-premises contracts moving* away from the minimum harmonisation approach in the former Directives *whilst allowing* Member States *to* maintain or adopt national rules *in relation to certain aspects*.
- (3) Article 169(1) and *point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU)* provides that the *Union* is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 114 thereof.
- (4) In accordance with Article 26(2) *TFEU*, the internal market *is to comprise* an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer *distance and off-premises contracts* is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect *for* the principle of subsidiarity.
- (5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential *for* further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector, *for instance* utilities, the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium *sized* enterprises (including individual *traders*) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to *a high level of consumer protection and a* better functioning of the business-to-consumer internal market.

¹ *OJ L 372, 31.12.1985, p. 31.*

² *OJ L 144, 4.6.1997, p. 19.*

- (7) *Certain* disparities create significant internal market barriers affecting *traders* and consumers. They increase compliance costs to *traders* wishing to engage in *the* cross-border sale of goods or provision of services. *Disproportionate fragmentation* also undermines consumer confidence in the internal market. ■
- (8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and *traders*. Both consumers and *traders* will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the *Union*. The effect will be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. *Those* barriers can only be eliminated by establishing uniform rules at *Union* level. Furthermore consumers will enjoy a high common level of protection across the *Union*.
- (8a) *The harmonised regulatory aspects concern only contracts concluded between traders and consumers. Therefore, this Directive should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements.*
- (9) *As far as* business-to-consumer contracts ■ *are concerned, the Directive establishes* rules on information to be provided *for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts. This Directive also regulates the right of withdrawal for distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of* consumer contracts.
- (10) The provisions of this Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council *of 17 June 2008 on the law* applicable to contractual obligations (Rome I)¹.
- (10a) *This Directive should be without prejudice to Union provisions relating to specific sectors, such as medicinal products for human use, medical devices, privacy and electronic communications, patients' rights in cross-border healthcare, food labelling and the internal market on electricity and natural gas.*
- (10b) *The information requirements provided for in this Directive complete the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market² and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market*

¹ OJ L 177, 4.7.2008, p. 6.

² *OJ L 376, 27.12.2006, p. 36.*

(Directive on electronic commerce)¹. The possibility for Member States to impose additional information requirements applicable to service providers established in their territory is maintained.

- (10c) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions in relation to transactions that fall outside the scope of this Directive. For instance, Member States may decide to extend the application of the rules of this Directive to legal or natural persons which are not 'consumers' in the meaning of this Directive, such as for example non-governmental organisations, start-ups or small and medium-sized enterprises. Member States may similarly apply the rules of this Directive to contracts that are not 'distance contracts' within the meaning of this Directive, for example because they are not concluded under an organised distance sales or service-provision scheme. Moreover, Member States may also maintain or introduce national provisions on issues not specifically addressed in the Directive, such as additional rules concerning sales contracts, including in relation to delivery of goods or requirements for the provision of information during the existence of a contract.*
- (10d) This Directive should not affect national law in the area of contract law insofar as contract law aspects are not regulated in this Directive. Therefore, this Directive should be without prejudice to national law regulating for instance the conclusion or the validity of a contract, for instance lack of consent. Similarly, this Directive should not affect the general contractual legal remedies, the rules on public economic order, for instance rules on excessive or extortionate prices, and the rules on unethical legal transactions.*
- (10e) This Directive does not harmonise language requirements applicable to consumer contracts. Therefore, Member States may maintain or introduce in their national law linguistic requirements regarding contractual information requirements and contract terms.*
- (10f) This Directive should not affect national laws on legal representation such as the rules relating to the person who is acting in the name of the trader or on his behalf (such as an agent or a trustee). Member States remain competent in this area. This Directive should apply to all traders, whether public or private.*
- (10g) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person's trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.*

¹ OJ L 178, 17.7.2000, p. 1.

- (10h) *This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and what specific obligation they should be subject to.*
- (10i) *Digital content means data which is produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts irrespective of whether it is accessed through downloading, streaming, from a tangible medium or through any other means. Contracts for the supply of digital content should fall within the scope of this Directive. If digital content is supplied on a tangible medium, such as CD or DVD, it is considered as goods within the meaning of this Directive. As with contracts for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, district heating or digital content not supplied on a tangible medium should be classified neither as sales contracts nor as service contracts for the purpose of this Directive. For such contracts, the consumer should have a right of withdrawal unless the consumer has consented to the beginning of the performance during the withdrawal period and acknowledged that he will consequently lose the right to withdraw from the contract. In addition to the general information requirements, traders should inform consumers about the functionality and the relevant interoperability of the digital content. The notion of functionality refers to the ways in which digital content can be used, for instance tracking of consumer behaviour, as well as the absence or presence of any technical restrictions, for instance protection via Digital Rights Management, region coding. The notion of relevant interoperability is meant to describe the information regarding the standard hardware and software environment with which the digital content is compatible, for instance the operating system, the necessary version, certain hardware features. The Commission should examine the need for further harmonised provisions in respect of digital content and submit, if necessary, a proposal for addressing this matter.*

- (12) The definition of distance contract should cover all cases where contracts are concluded *between the trader and the consumer under an organised distance sales or service provision scheme, with the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax)*, up to and including the time at which the contract is concluded. It should also cover situations where the consumer merely visits the business premises for the purpose of gathering information about the goods or service and the subsequent negotiation and conclusion of the contract takes place at a distance. On the other hand, a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract. Neither should a contract initiated by distance communication, but finally concluded at the business premises of the trader be considered a distance contract. Similarly, the concept of distance contract should not include the reservations made by a consumer through a means of distance

communications to request the provision of a service from a professional, such as in the case of a consumer phoning to request an appointment with a hairdresser. The notion of an organised distance sales or service-provision scheme includes those schemes offered by a third party other than the trader but used by the trader, such as an online platform. It does not, however, cover cases where websites offer purely information on the trader, his goods and/or services and how the trader can be contacted.

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- (14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, *in a place which is not the business premises of the trader*, for example at the consumer's home or workplace. In an off-premises context, consumers *may be* under *potential* psychological pressure *or may be confronted with an element of surprise, irrespective of* whether *or not* they have solicited the trader's visit. *The definition of an off-premises contract should also include situations where the consumer is personally and individually addressed in such circumstances but the contract is concluded immediately afterwards on the business premises of the trader or through a means of distance communication. The definition of an off-premises contract does not cover situations for which traders first come to the consumer's home strictly with a view to taking measurements or giving an estimate without any commitment of the consumer and where the contract is then concluded only at a later point in time on the trader's premises or via means of distance communication on the basis of the trader's estimate. In those cases, the contract is not concluded immediately after the trader has addressed the consumer if the consumer had time to reflect upon the estimate of the trader before concluding the contract. Purchases made during an excursion of the trader during which he carries out the promotion and sale of the products acquired should be considered as off-premises contracts.*
 - (15) Business premises should include premises in whatever form (such as shops, *stalls* or lorries) which serve as a permanent *or usual* place of business for the trader. Market stalls and fair stands should be treated as business premises *if they fulfil this requirement. Retail premises where the trader carries out his activity on a seasonal basis, for instance during the tourist season at a ski or beach resort, should be treated as business premises as the trader carries on his activity on a usual basis. The spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport, that the trader uses on an exceptional basis for his business activities* as well as private homes or workplaces should not be regarded as business premises. *The business premises of a person acting in the name or on behalf of the trader as defined in this Directive should be considered as business premises within the meaning of this Directive.*
 - (16) *Durable media should enable the consumer to store the information for as long as it is relevant for him to protect his interests stemming from his relationship with the trader. Such media include in particular* **I** *paper, USB*

sticks, CD-ROMs, DVDs, memory cards *or* the hard *disks of computers as well as* electronic *mails*.

- (16a) *A public auction implies that traders and consumers attend or are given the possibility to attend the auction in person. The goods or services are offered by the trader to consumers through a bidding procedure authorised by law in some Member States, to sell goods at public sale, a so-called auctioneer. The successful bidder is bound to purchase the goods or services. The use of on-line platforms for auction purposes at the disposal of consumers and traders is not considered as a public auction within the meaning of this Directive.*

- (20a) *Contracts related to district heating should be covered by this Directive, similarly to the contracts for the supply of water, gas and electricity. District heating refers to the supply of heat, inter alia in the form of steam or hot water, from a central source of production through a transmission and distribution system to multiple buildings, for the purpose of heating.*

- (20b) *Contracts related to the transfer of rights in immovable property or the creation of such rights, contracts for the construction of new buildings, for the substantial conversion of existing buildings as well as contracts for rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation. These include for instance sales of immovable property still to be developed and hire-purchase. The provisions of this Directive are not appropriate to those contracts. For these reasons, this Directive should not apply to such contracts. A substantial conversion is a conversion comparable to the construction of a new building, for example where only the façade of an old building is retained. Service contracts in particular related to the construction of annexes to buildings (for example a garage or a veranda) and related to repair and renovation of buildings other than substantial conversion are included in the scope of this Directive, as well as contracts related to the services of a real estate agent and the contracts related to the rental of accommodation for non-residential purposes.*

- (20c) *Transport services cover passenger transport and transport of goods. Passenger transport is excluded from the scope of this Directive as it is already subject to other Union legislation, or in the case of public transport and taxis, subject to regulation at national level. However, the provisions protecting consumers against excessive fees for the use of means of payment or against hidden costs should apply also to passenger transport contracts. In relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by this Directive, with the exception of the right of withdrawal.*

- (20d) *In order to avoid administrative burden, Member States may decide not to apply provisions of this Directive where goods or services of a minor value are sold off-premises. The monetary threshold should be established at a sufficiently low level as to cover only purchases of small significance. Member States may define this value in national legislation provided that it*

does not exceed EUR 50. When more contracts with related subjects are concluded at the same time by the consumer, the total cost should not exceed this threshold.

- (20e) Social services have fundamentally distinct features that are reflected in sector-specific regulations, part of them at the Union level and part of them at the national level. Social services include, on the one hand, services for particularly disadvantaged or low income persons as well as services for persons and families in need of assistance in carrying out routine, everyday tasks and, on the other hand, services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase. These cover, inter alia, services for children and youth, assistance services for families, single parents and older persons and services for migrants. They cover both short-term and long-term care services, for instance provided by home care services, in assisted living facilities and residential homes or housing ("nursing homes"). Social services are not only those provided by the State at a national, regional or local level by providers mandated by the State or by charities recognised by the State but also those provided by private operators. The provisions of this Directive are not appropriate to social services which are thus excluded from its scope.*
- (20f) Healthcare requires special regulations because of its technical complexity, its importance for services of general interest as well as extensive public funding. Healthcare is defined in the Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application on patients' rights in cross-border healthcare¹ as "health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices". Health professional means a doctor of medicine or a nurse responsible for general care or a dental practitioner or a midwife or a pharmacist within the meaning of Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC. The provisions of this Directive are not appropriate to healthcare which is thus excluded from its scope.*
- (20g) Gambling is excluded from the scope of this Directive. Gambling activities are those which involve wagering at stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions. Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities.*
- (20h) The existing Union legislation inter alia relating to consumer financial services, package travel and timeshare contains numerous rules on consumer protection. For this reason, this Directive should not apply to contracts relating to these areas. With regard to financial services, Member*

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OJ L 88, 4.4.2011, p. 45.

States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at the Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured.

- (20i)** *Traders should be obliged to inform consumers in advance of any arrangement resulting in the consumers paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumers' credit or debit card.*
- (20j)** *The consumer should be given clear and comprehensible information before he is bound by any distance or off-premises contract, any contract other than an off-premises or a distance contract or any corresponding offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.*
- (20k)** *The information to be provided to the consumer is mandatory and cannot be altered. Nevertheless, the contracting parties should be able to expressly agree to change the content of the contract subsequently concluded, for instance the arrangements for delivery.*
- (21)** *In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, as the restrictions on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In such cases the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible. As to the requirement to inform the consumer of the cost of returning the goods, which by their nature cannot normally be returned by post, the trader would comply, for example, if he specifies one carrier (for instance the one he assigned for the delivery of the good) and one price concerning the cost of returning the goods. Where the cost of returning the goods cannot reasonably be calculated in advance by the trader, for example because the trader does not offer to arrange for the return of the goods himself, the trader should provide a statement that such a cost will be payable, and that this cost may be high, along with a reasonable estimation of the maximum cost, which could be based on the cost of delivery to the consumer.*
- (22)** *Since in the case of distance sales, the consumer is not able to see the goods before concluding the contract he should have a right of withdrawal. For the same reason, the consumer should be allowed to test and inspect the goods he wants to buy to the extent necessary to establish the nature, characteristics and functioning of the goods. Concerning off-premises contracts, the consumer should have the right of withdrawal due to the*

potential surprise element and/or psychological pressure. Withdrawal from the contract should terminate the obligations of the contracting parties to perform the contract.

- (22a) *In the case of online contracts, trading websites should indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and what means of payment are accepted.*
- (22b) *It is important to ensure that, in distance contracts concluded through websites, the consumer is able to fully read and understand the main elements of the contract before placing his order. To that end, provision should be made for those elements to be displayed in the close vicinity of the confirmation requested for placing the order. It is also important to ensure that, in such situations, the consumer is able to determine the moment at which he assumes the obligation to make a payment to the trader. Therefore, the consumer's attention should specifically be drawn, through an unambiguous formulation, to the fact that placing the order entails the obligation to make a payment to the trader.*
- (23) The current varying lengths of the withdrawal periods both between the Member States and for distance and off-premises contracts cause legal uncertainty and compliance costs. The same withdrawal period should apply to all distance and off-premises contracts. *In the case of services contracts, the withdrawal period should expire 14 days from the conclusion of a contract. In the case of sales contracts, the withdrawal period should expire 14 days from the day when the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods, while the consumer should be able to exercise the right to withdraw before the receipt of goods. Where multiple goods are ordered by the consumer in one order but are delivered separately, the withdrawal period should start when the consumer acquires physical possession of the last good. Where goods are delivered in multiple lots or pieces, the withdrawal period should begin from the day on which the consumer acquires the material possession of the last lot or piece.*
- (24) To ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits¹ should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days. *Where a period expressed in days is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question.*
- (24a) *The provisions relating to the right of withdrawal are without prejudice to the Member States' laws and regulations governing the termination or non-enforceability of a contract or the possibility for a consumer to fulfil his contractual obligations before the time fixed in the contract.*

¹ OJ L 124, 8.6.1971, p. 1.

- (27) If the trader has not **adequately** informed the consumer prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **twelve-month** limitation period should be introduced .
- (28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for **traders** selling cross-border. The introduction of a harmonised **model** withdrawal form **that** the consumer **may use** should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Union-wide model** form relating for example to the font size. **However, the consumer should remain free to withdraw in using his own words, provided that his statement to the trader is unequivocal. A letter, a telephone call or returning the goods with a clear statement could meet this requirement, but the burden of proof of having withdrawn within the time limits fixed in the Directive will be incumbent on the consumer. For this reason, it is in the interest of the consumer to make use of a durable medium when communicating his withdrawal to the trader.**
- (29) As experience shows that many consumers and traders prefer to communicate via the trader's website, there should be a possibility for the trader to give the consumer the option of filling in a web-based withdrawal form. In this case the trader should provide an acknowledgement of receipt **for instance** by email without delay.
- (30) In **the event** of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses **borne** by the trader to deliver goods to the consumer. **The reimbursement should not be made by voucher unless the consumer has expressly agreed. If the consumer expressly chooses a certain type of delivery (for instance 24-hour express delivery), although the trader had offered a common and generally acceptable type of delivery which would have incurred lower delivery costs, the consumer should bear the difference in costs between these two types of delivery.**
- (31) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to **establish** the nature, **characteristics** and functioning of the **goods**. In this case the consumer should **not lose the right to withdraw but should** be liable for any diminished value of the goods. In order to **establish** the nature, **characteristics** and functioning of **the goods**, the consumer should only handle **and inspect** it in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. **Consequently, the consumer should handle and inspect the goods with due care during the withdrawal period. The provisions of Article 17 should not discourage the consumer from benefiting from his right of withdrawal.**
- (32) **The** consumer should be required to send back the goods no later than **14** days after having informed the trader about his decision to withdraw. **In situations where the trader or the consumer does not fulfil the obligations**

connected with the exercise of the right of withdrawal, penalties provided for by national legislation in accordance with Article 42 should apply as well as contract law provisions.

- (33) Certain *exceptions* should exist from the right of withdrawal, *both for distance and off-premises contracts*. A right of withdrawal *could* be inappropriate *for example* given the nature of the *goods or services*. That is applicable for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market ("vin en primeur"). *The right of withdrawal should be inappropriate for goods made to the consumer's specifications or clearly personalised such as tailor-made curtains. A right of withdrawal should also be inappropriate for the supply of fuel, for example, which is a good, by nature, inseparable after delivery from other items. The application of a right of withdrawal could also be inappropriate for certain services where the conclusion of the contract implies the setting aside of capacity which, if a right of withdrawal was introduced, the trader may find difficult to fill. This would for example be the case when reservations are made at hotels or concerning holiday cottages, cultural or sporting events.*
- (33a) *On the one hand, the consumer should benefit from his withdrawal right even in case he has asked for the provision of services before the end of the withdrawal period. On the other hand, if the consumer does exercise his right of withdrawal, the trader should be assured to be adequately paid for the service he has provided. The calculation of the proportionate amount should be based on the price agreed in the contract unless the consumer demonstrates that that total price is itself disproportionate, in which case the amount to be paid shall be calculated on the basis of the market value of what has been provided. The market value is defined by comparing the price of an equivalent service performed by other traders at the time of the conclusion of the contract. Therefore the consumer should request the provision of services before the end of the withdrawal period by making this specific request expressly in the case of distance contracts or on a durable medium in the case of off-premises contracts. Similarly, the trader should inform the consumer on a durable medium of any obligation to pay the proportionate costs for the service already provided. For contracts having as their object both goods and services, the rules provided for in this Directive on the return of goods should apply to the goods aspects and the compensation regime for services should apply to the services aspects.*

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- (37) ■ The main difficulties encountered by consumers and *one of* the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on *when delivery should occur. The place and modalities of delivery and the rules concerning the determination of the conditions for and the moment at which the ownership of the goods is transferred, remain subject to national law and are thus not affected by this Directive. These rules include the possibility for the consumer to allow a third party to acquire on his behalf*

the physical possession or control of the goods. The consumer should be considered to have control of the goods where he or a third party indicated by the consumer has access to the goods to use them as an owner, or the ability to resell the goods (for example, when he has received the keys or possession of the ownership documents).

- (38) In the context of **■** sales contracts, the delivery of goods can take place in various ways, *either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible, but in any event not later than thirty days from the day of the conclusion of the contract. The rule regarding the late delivery should also take into account goods to be manufactured or acquired specially for the consumer which cannot be reused by the trader without considerable loss. Therefore, a rule which grants an additional reasonable delay to the trader in certain circumstances should be provided for in this Directive. When the trader has failed to deliver the goods in the time agreed with the consumer, before the termination of the contract, the consumer should call upon the trader to make the delivery within a reasonable additional period and be entitled to terminate the contract. However, this rule should not apply when the trader has refused to deliver the goods in an unequivocal statement. Neither should it apply in certain circumstances where the delivery period is essential such as, for example, a wedding dress which should be delivered before the wedding. Nor should it apply in circumstances where the consumer informs the trader that delivery on a specified date is essential. For this purpose, consumers may use the contact details given in accordance with point (b) of Article 5(1) or point (b) of Article 9(1). In these specific cases, if the trader fails to deliver the goods on time, the consumer is entitled to terminate the contract immediately after the expiry of the delivery period initially agreed. This Directive should be without prejudice to national provisions on the way the consumer should notify the trader of his will to terminate the contract.*
- (38a) *In addition to the consumer's right to terminate the contract where the trader has failed to fulfil his obligations to deliver in accordance with this Directive, the consumer may, in accordance with the applicable national law, have recourse to other remedies, such as to allow an additional time for delivery, enforce the performance of the contract, withhold payment, and seek damages.*
- (38b) *In accordance with Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market¹, Member States should be able to prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments. In any event, traders should be prohibited from charging consumers fees that exceed the cost borne by the trader for the use of a certain means of payment.*

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OJ L 319, 5.12.2007, p. 1.

- (38c) *When the goods are dispatched to the consumer by the trader, the moment of the transfer of risk could be, in case of loss or damage, a source of disputes. Therefore a rule which provides that the consumer should be protected against any risk of loss or damage of the goods occurring before he has acquired the physical possession of the goods has been inserted in this Directive. The consumer should be protected during a transport arranged or carried out by the trader, even where the consumer has chosen a particular delivery method from a range of options offered by the trader. On the other hand, this Directive should not apply to contracts where it is up to the consumer to take delivery of the goods himself or to ask a carrier to take delivery. Regarding the moment of the transfer of the risk, a consumer should be considered to have acquired the physical possession of the goods when he has received them.*

- (57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.
- (58) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and ensure that *they* are enforced. The penalties should be effective, proportionate and dissuasive.
- (59) The consumer should not be deprived of the protection granted by this Directive. Where the law applicable to the contract is that of a third country, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)¹ should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (60) The Commission, *following consultation with the Member States and stakeholders*, will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
- (61) Since inertia selling, which consists of unsolicited supplies of goods or services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')² but no contractual remedy is provided thereof, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the provision of any consideration for such unsolicited supplies.

¹ OJ L 177, 4.7.2008, p. 6.

² OJ L 149, 11.6.2005, p. 22.

- (62) Directive 2002/58/EC already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Directive 97/7/EC should be deleted.
- (63) It is appropriate to review this Directive if some barriers to the internal market were identified. *In its review, the Commission should pay particular attention to the possibilities foreseen for Member States to maintain or introduce specific national provisions including in certain areas of Directives 93/13/EEC and 1999/44/EC.* The review could lead to a Commission proposal to amend this Directive, which may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the acquis in order to achieve a high, common level of consumer protection.
- (63a) *Directives 93/13/EEC and 1999/44/EC should be amended to require Member States to inform the Commission about the adoption of specific national provisions in certain areas.*
- (64) Directives 85/577/EEC and 97/7/EC should be repealed.
- (65) Since the *objective* of this Directive, *namely, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market*, cannot be sufficiently achieved by the Member States and can therefore be better achieved at *Union* level, the *Union* may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on *European Union*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve *that objective*.
- (66) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (66a) *In accordance with point 34 of the Interinstitutional agreement on better law making¹, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public,*

HAVE ADOPTED THIS DIRECTIVE:

Chapter I
Subject matter, definitions and scope

Article 1
Subject matter

The purpose of this Directive is, *through the achievement of a high level of consumer protection*, to contribute to the proper functioning of the internal market

¹ *OJ C 321, 31.12.2003, p. 1.*

by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Article 2 Definitions

For the purpose of this Directive, the following definitions shall apply:

- (1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (2) 'trader' means any natural *person* or *any* legal person, *irrespective of whether privately or publicly owned*, who is acting, *including through any other person acting in his name or on his behalf*, for the purposes relating to his trade, business, craft or profession *in relation to contracts covered by this Directive*;

■

- (4) 'goods' means any tangible movable item, with the exception of ■ goods sold by way of execution or otherwise by authority of law. *Water, gas and electricity shall be considered as 'goods' within the meaning of this Directive* where they are ■ put up for sale in a limited volume or set quantity ■ ;
- (4a) *'goods made to the consumer's specifications' means non-prefabricated goods made on the basis of an individual choice or decision by the consumer;*
- (4b) *'sales contract' means any contract under which a trader transfers or undertakes to transfer the ownership of goods to a consumer and the consumer pays or undertakes to pay the price, including any contract having as its object both goods and services;*
- (5) 'service contract' means any contract other than a sales contract *under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price;*
- (6) 'distance contract' means any *contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme* without the simultaneous physical presence of the trader and the consumer, *with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;*

■

- (8) 'off-premises contract' means *any contract between a trader and a consumer either:*
 - (a) ■ concluded *in* the simultaneous physical presence of the trader and the consumer, *in a place which is not the business premises of the trader;*
 - or*

(aa) for which an offer was made by the consumer in the same circumstances, *as referred to in point (a)*; or

(b) concluded on *the* business premises *of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the* business premises, *of the trader in* the simultaneous physical presence of the trader and the consumer; *or*

(ba) *concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.*

(9) 'business premises' means:

(a) any immovable retail premises where the trader carries on his activity on a permanent basis; or

(b) *any movable retail premises* where the trader carries on his activity on a *usual* basis;

(10) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(12a) *'digital content' means data which are produced and supplied in digital form;*

(13) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;

(16) 'public auction' means a method of sale where goods *or services* are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a *transparent*, competitive bidding procedure run by an auctioneer and where the *successful* bidder is bound to purchase the goods *or services*;

(18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer, *in addition to his legal obligation relating to the guarantee of conformity*, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications *or any other requirements not related to conformity* set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

- (20) 'ancillary contract' means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and *those* goods or services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.

Article 3

Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to **■** contracts concluded between *a* trader and *a* consumer. *It shall also apply to contracts for the supply of water, gas, electricity and district heating by public providers to the extent that these commodities are provided on a contractual basis.*

2. *If the provisions of this Directive conflict with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.*

3. *This Directive shall not apply to contracts:*

- (a) *for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care;*
- (b) *for healthcare as defined in Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients rights in cross-border healthcare¹, whether or not they are provided via healthcare facilities;*
- (c) *for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;*
- (d) *for financial services;*
- (e) *for the creation, acquisition or transfer of rights of or in immovable property;*
- (f) *for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;*
- (g) *which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours²;*
- (h) *which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts³;*

¹ OJ L 88, 4.4.2011, p. 45.

² OJ L 158, 23.6.1990, p. 59.

³ OJ L 33, 3.2.2009, p. 10.

- (i) *which, in accordance with the provisions of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;*
- (j) *for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;*
- (k) *for passenger transport services, with the exception of Article 11(1a) and Articles 22a and 28b;*
- (l) *concluded by means of automatic vending machines or automated commercial premises;*
- (m) *concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.*

4. *Member States may decide not to apply this Directive nor maintain or introduce corresponding national provisions to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. Member States may define a lower value in their national legislation.*

4a. *This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, insofar as general contract law aspects are not regulated in this Directive.*

4b. *This Directive shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided for in this Directive.*

Article 4 *Level of harmonisation*

Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection ***unless otherwise provided in this Directive.***

Chapter II Consumer information *for contracts other than off-premises or distance contracts*

Article 5 *Information requirements for contracts other than off-premises or distance contracts*

1. *Before the consumer is bound by any contract other than an off-premises or a distance contract, or any corresponding offer, the trader shall provide the*

consumer with the following information *in a clear and comprehensible manner*, if not already apparent from the context:

- (a) the main characteristics of the *goods or services, to the* extent appropriate to the medium and *to the goods or services*;
- (b) **■** the identity of the trader, such as his trading name**■**, the geographical address *at which* he is *established and his telephone number*;
- (c) the *total* price inclusive of taxes, or where the nature of the *goods or services* means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where *applicable*, all additional freight, delivery or postal charges or, where *those* charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) *where applicable*, the arrangements for payment, delivery, performance, *the time by which the trader undertakes to deliver the goods or to perform the service*, and the *trader's* complaint handling policy **■**;

■

- (f) *in addition to a reminder of* the existence of a *legal guarantee of conformity for goods*, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
- (g) the duration of the contract where applicable or if the contract is *of indeterminate duration or is to be extended automatically*, the conditions for terminating the contract;

■

- (ia) *the functionality, including applicable technical protection measures, of digital content, where applicable*;
- (ib) *where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.*

2. *Paragraph 1 shall also apply to contracts for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, to district heating and to digital content which is not supplied on a tangible medium.*

3. *Member States shall not be required to apply paragraph 1 to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.*

3a. *Member States may adopt or maintain additional pre-contractual information requirements for contracts other than off-premises or distance contracts.*

■

Chapter III
Consumer information and withdrawal right for distance and off-premises contracts



Article 9
Information requirements for distance and off-premises contracts

1. ***Before the consumer is bound by any distance or off-premises contract or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:***
 - (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
 - (b) ***the identity of the trader, such as his trading name;***
 - (ba) ***the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;***
 - (c) ***if different from the address provided in accordance with point (ba), the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;***
 - (ca) ***the total price inclusive of taxes, or where the nature of the goods or services means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is calculated should be provided;***
 - (cb) ***the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;***
 - (d) ***the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;***
 - (e) ***where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 14(1), as well as the model withdrawal form set out in Annex I(B);***

- (ea) *where applicable, that the consumer will have to bear the cost of the return of the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;*
- (eb) *where the consumer could exercise the right of withdrawal after having made a request pursuant to Article 10(2a) or Article 11(4a), that the consumer would be liable to pay the trader reasonable costs according to Article 17(3);*
- (ec) *where a right of withdrawal shall not apply in accordance with Article 19(1), the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;*
- (f) *a reminder of the existence of a legal guarantee of conformity for goods;*
- (fa) *the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees where applicable;*
- (fb) *the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;*
- (fc) *the minimum duration of the consumer's obligations under the contract, where applicable;*
- (fd) *the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader, where applicable;*
- (fe) *the functionality, including applicable technical protection measures, of digital content, where applicable;*
- (ff) *where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;*
- (fg) *the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.*

2. *Paragraph 1 shall also apply to contracts for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, district heating and digital content which is not supplied on a tangible medium.*

3. *In the case of a public auction, the information referred to in points (b), (ba) and (c) of paragraph 1 may be replaced by the equivalent details for the auctioneer.*

4. *The information in points (e), (ea) and (eb) of paragraph 1 may be provided by means of the Model instructions on withdrawal set out in Annex I(A). The trader*

shall be deemed to have fulfilled the information requirements in points (e), (ea) and (eb) of paragraph 1 if he has supplied these instructions, correctly filled in.

5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the parties expressly agree otherwise.

6. If the trader has not complied with the information requirements on additional charges or other costs as referred to in point (ca) of paragraph 1, or on the costs of returning the goods as referred to in points (ea) of paragraph 1, the consumer shall not bear those charges or costs.

7. Member States may maintain or introduce in their national law linguistic requirements regarding the contractual information, so as to ensure that such information is easily understood by consumers.

8. The information requirements laid down in this Directive are in addition to information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council of 10 January 2006 and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 and do not prevent Member States from imposing additional information requirements in accordance with Directive 2006/123/EC and Directive 2000/31/EC.

Without prejudice to subparagraph 1, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail.

9. As regards compliance with the information requirements referred to in this Chapter, the burden of proof shall be upon the trader.

Article 10

Formal requirements for off-premises contracts

*1. With respect to off-premises contracts, the information provided for in Article 9 shall be given **to the consumer on paper or**, if the consumer **agrees**, on another durable medium. **That information shall be legible and in plain, intelligible language.***

2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on a different durable medium, including, where applicable, the confirmation of the consumer's consent and acknowledgement according to point (j) of Article 19(1).

2a. Where a consumer wishes the performance of services or the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity or district heating to begin during the withdrawal period provided for in Article 12(2), the trader shall require that the consumer makes such an express request on a durable medium.

2b. With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repair or

maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed EUR 200:

- (a) the trader shall provide the consumer with the information referred to in points (b) and (ba) of Article 9(1) and information about the price or the manner in which the price is calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (e) and (ec) of Article 9(1), but may refrain from providing it on paper or another durable medium if the consumer expressly agrees;*
- (b) the confirmation of the contract provided in accordance with paragraph 2 shall contain the information provided for in Article 9(1).*

Member States may decide not to apply this paragraph.

3. Member States shall not impose any *further* formal *pre-contractual information* requirements *for the fulfilment of the information obligations laid down in this Directive.*

Article 11

Formal requirements for distance contracts

1. With respect to distance contracts, the information provided for in Article 9 **■** shall be given or made available to the consumer **■** in a way appropriate to the means of distance communication used *in plain and intelligible language and, insofar as it is provided on a durable medium, it shall be legible.*

1a. If a distance contracts to be concluded by electronic means places the consumer under an obligation to make a payment, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (ca), (fb) and (fc) of Article 9(1).

The trader shall ensure that the consumer, when placing his order, explicitly confirms that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words "order with duty of payment" or a corresponding unambiguous formulation indicating that placing the order entails an obligation to make a payment to the trader. If this subparagraph is not complied with, the consumer shall not be bound by the contract or order.

■

2a. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and what means of payment are accepted.

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide **■**, on that particular medium prior to the conclusion of such a contract, *at least the pre-contractual information*

regarding the main characteristics of the good or service, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, referred to in points (a), (b), (ca), (e) and (fb) of Article 9(1). The other information referred to in *Article 9* shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 *of this Article*.

3a. Without prejudice to paragraph 3, if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and, where applicable, the identity of the person, on whose behalf he makes that a phone call, and the commercial purpose of the call at the beginning of the conversation with the consumer.

3b. Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is committed only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

4. The trader shall provide the consumer with confirmation of the contract concluded, including, where applicable, of the consent and acknowledgement of the consumer according to point (j) of Article 19(1), and all the information referred to in Article 9(1), on a durable medium, in reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins, unless the information has already been given to the consumer prior to the conclusion of the distance contract on a durable medium.

4a. Where a consumer wishes the performance of services, or the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity or district heating to begin during the withdrawal period provided for in Article 12(2), the trader shall require that the consumer makes such an express request.

4b. This Article shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders as set out by Articles 9 and 11 of Directive 2000/31/EC of the European Parliament and of the Council.

5. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

Article 12

Right of withdrawal

1. Subject to exceptions referred to in Article 19, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those foreseen in Article 16(2) and Article 17.

2. Without prejudice to Article 13, the withdrawal period referred to in paragraph 1 shall expire after 14 days from:

- (a) *in the case of service contracts, the day of the conclusion of the contract;*
- (b) *in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires **physical** possession of the goods or:*
 - (i) *in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;*
 - (ii) *in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;*
 - (iii) *in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;*
- (c) *in the case of contracts for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, district heating and digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.*

4. The Member States shall not prohibit the parties from performing their *contractual* obligations during the withdrawal period. *Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during the given period after the conclusion of the contract.*

Article 13

Omission of information on the right of withdrawal

1. If the trader has not provided the consumer with the information on the right of withdrawal in breach of *point (e) of Article 9(1)*, the withdrawal period shall expire *12 months from the end of the initial withdrawal period, as determined in accordance with Article 12(2).*
2. *If the trader has provided the consumer with the information provided for in paragraph 1 within 12 months from the day referred to in Article 12(2), the withdrawal period shall expire 14 days upon which the day where the consumer receives the information.*

Article 14

Exercise of the right of withdrawal

1. *Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw. For this purpose, the consumer may either:*

- (a) *use the model* withdrawal form as set out in Annex I(B); *or*
- (b) *make any other unequivocal statement setting out his decision to withdraw.*

Member States shall not provide for any **■** formal requirements applicable to *the model* withdrawal form *other than those set out in Annex I(B)*.

1a. The withdrawal period referred to in Article 12(2) and Article 13 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before that period has expired.

2. *The* trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit *either the model* withdrawal form *set out in Annex I(B) or any other unequivocal statement* on the trader's website. In *those cases* the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal *on a durable medium* without delay.

2a. The burden of proof of exercising the right of withdrawal in accordance with this Article shall be incumbent on the consumer.

Article 15 Effects of withdrawal

The exercise of the right of withdrawal shall terminate the obligations of the parties:

- (a) to perform the distance or off-premises contract, or
- (b) to conclude *the distance or* off-premises contract, in cases where an offer was made by the consumer.

Article 16 Obligations of the trader in case of withdrawal

1. The trader shall reimburse *all payments* received from the consumer, *including, if applicable, the costs of delivery without undue delay and in any event not later than 14* days from the day on which he *is informed of the consumer's decision to withdraw in accordance with Article 14*.

The trader shall carry out the reimbursement referred to in the first subparagraph using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of reimbursement.

2a. Notwithstanding paragraph 1, the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than least expensive type of standard delivery offered by the trader.

3. *Unless the trader has offered to collect the goods himself, for* sales contracts, the trader may withhold the reimbursement until he has received **■** the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Article 17
Obligations of the consumer in case of withdrawal

1. For ***distance or off-premises*** contracts **■**, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, ***without undue delay and in any event not later than 14 days*** from the day on which he communicates his ***decision to withdraw*** to the trader ***in accordance with Article 14***, unless the trader has offered to collect the goods himself. ***The deadline is met if the goods are sent back by the consumer before the period of 14 days has expired.***

The consumer shall only ***bear*** the direct cost of returning the goods unless the trader has agreed to bear ***them or the trader failed to inform the consumer that the consumer has to bear them.***

In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, the trader shall at his own expense collect the goods if, by their nature, those goods cannot be normally returned by post.

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ***establish*** the nature, ***characteristics*** and functioning of the goods. ***The consumer shall in any event*** not be liable for diminished value ***of the goods*** where the trader has failed to provide notice of the **■** right ***of withdrawal*** in accordance with ***point (e) of Article 9(1).***

2a. ***Where a consumer exercises the right of withdrawal after having made a request in accordance with Article 10(2a) or Article 11(4a), the consumer shall pay to the trader an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader shall be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.***

2b. ***The consumer shall bear no cost for***

(a) ***services performed, the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or district heating supplied, in full or in part, during the withdrawal period, where:***

(i) ***the trader has failed to provide information in accordance with points (e) or (eb) of Article 9(1); or***

(ii) ***where the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 10(2a) and Article 11(4a); or***

(b) ***the supply, in full or in part, of digital content which is not supplied on a tangible medium where:***

- (i) *the consumer has not given his prior express consent to the beginning of the performance before the end of the 14-day period referred to in Article 12, or*
- (ii) *the consumer did not acknowledge that he loses his right of withdrawal when giving his consent, or*
- (iii) *the trader has failed to provide the confirmation in accordance with Article 11(4).*

2c. Except as provided for in Article 16(2) and in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.

Article 18

Effects of the exercise of the right of withdrawal on ancillary contracts

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any ancillary contracts shall be automatically terminated, without any costs for the consumer *that are not provided for in Article 16(2) and in Article 17 of this Directive*.
2. The Member States shall lay down detailed rules on the termination of such contracts.

Article 19

Exceptions from the right of withdrawal

1. **Member States shall not provide for the right of withdrawal set out in Articles 12 to 18 in respect of distance and off-premises contracts** as regards the following:
 - (a) *service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract is fully performed by the trader;*
 - (b) *the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;*
 - (c) *the supply of goods made to the consumer's specifications or clearly personalized;*
 - (ca) *the supply of goods which are liable to deteriorate or expire rapidly;*
 - (cb) *the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;*
 - (cc) *the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;*

- (d) the supply of *alcoholic beverages*, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place *after 30 days* and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;

- (da) contracts for which the consumer has specifically requested the trader to visit *him* for the purpose of *carrying out urgent repairs or* maintenance. *If on the occasion of such visit*, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in *carrying out* the maintenance or in making the repairs, the right of withdrawal *should* apply to those additional services or goods.

- (e) *the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;*
- (f) *the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;*
- (g) *contracts concluded at a public auction;*
- (h) the provision of accommodation *other than for residential purpose*, transport *of goods*, car rental services, catering or *services related to leisure activities if the contract provides* for a specific date or period of performance;
- (i) *the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he hereby loses his right of withdrawal.*

Chapter IV Other consumer rights

Article 21 Scope

1. *Articles 22 and 23 shall apply to sales contracts. Those Articles shall not apply to contracts for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, district heating or the supply of digital content other than on a tangible medium.*
2. *Articles 22b, 28a and 28b shall apply to sales and services contracts and to contracts for the supply of water, gas, electricity, district heating and digital content.*

Article 22 Delivery

1. Unless the parties have agreed otherwise *on the time of delivery*, the trader shall deliver the goods by transferring the *physical possession or control* of the goods

to the consumer *without undue delay after, but not later than 30* days from the conclusion of the contract.

2. Where the trader has failed to fulfil his *obligation* to deliver the goods at the time agreed on with the consumer or in time in accordance with paragraph 1, the consumer shall call upon him to make the delivery within a period appropriate to the circumstances. If the trader fails to deliver the goods within the appropriate time, the consumer shall be entitled to terminate the contract.

The first subparagraph shall not be applicable to sales contracts where the trader has refused to deliver the goods or where the delivery period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date is essential. In those cases, if the trader fails to deliver the goods at the time agreed upon with the consumer or in accordance with paragraph 1, the consumer shall be entitled to terminate the contract immediately.

2a. Upon termination of the contract, the trader shall, without undue delay, reimburse all sums paid under the contract.

3. In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided by national law.

Article 22a

Fees for the use of means of payment

Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

Article 23

Passing of risk

In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. The risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

■

Article 28a

Communication by telephone

Member States shall ensure that in the event that the trader operates a telephone line for the purpose of contacting him in relation to the contract concluded, the consumer - when contacting the trader - is not bound to pay more than the basic rate. This shall be without prejudice to the right of telecommunication services providers to charge for such calls.

Article 28b
Additional payments

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any ***extra*** payment in addition to the remuneration foreseen for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.



Chapter VI
General provisions



Article 41
Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) consumer organisations having a legitimate interest in protecting consumers;
 - (c) professional organisations having a legitimate interest in acting.

Article 42
Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify those provisions to the Commission by the date specified in ***the first subparagraph of Article 46(1)*** at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 43
Imperative nature of the Directive

If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by ***the transposition of*** this Directive ***into national law***.

Any contractual terms which directly or indirectly waive or restrict the rights resulting from this Directive shall not be binding on the consumer.

Article 44 Information

Member States shall take appropriate measures to inform consumers ***and traders*** of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Article 45 Inertia selling

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of ***goods, water, gas, electricity, district heating or digital content or unsolicited provision of a service***, prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. ***In such cases, the*** absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Article 46 Transposition

1. Member States shall adopt and publish, by ...* at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of ***these provisions measures in the form of documents. The Commission shall make use of these documents for the purposes of the report referred to in Article 46b.***

They shall apply those ***measures*** from ...*.

When Member States adopt those ***measures***, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

I

2a. The provisions of this Directive shall apply to contracts concluded after the date determined in the second subparagraph of paragraph 1.

Article 46a Reporting requirements

1. ***Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 9(7), Article 9(8), Article 10(2b), Article 11(3b) and Article 12(4), it shall inform the Commission thereof by ...*, as well as of any subsequent changes.***

* ***OJ please insert date: two years after the entry into force of this Directive.***
* ***OJ please insert date: thirty months after the entry into force of this Directive.***
* ***OJ please insert date: two years after the entry into force of this Directive.***

2. *The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website.*

3. *The Commission shall forward the information provided for in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on the information provided by Member States.*

Article 46b

Reporting by the Commission and review

By...^{}, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall include in particular an evaluation of provisions of this Directive regarding digital content including the right of withdrawal. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of consumer rights.*

Chapter VII *Final provisions*

Article 47 *Repeals*

Directives 85/577/EEC **■** and 97/7/EC **■**, as amended by the Directives listed in Annex *II*, are repealed *as of ...^{*}*.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex *III*.

Article 47a *Amendment of Directive 93/13/ECC*

In Directive 93/13/EEC, the following Article is inserted:

"Article 8a

1. *Where a Member State adopts provisions in accordance with Article 8, in particular in the following areas:*

- whether individually negotiated contract terms or the adequacy, price or remuneration are covered by the unfairness test;*
- of lists containing contract terms which shall be considered as unfair, it shall inform the Commission thereof, as well as of any subsequent changes.*

2. *The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website.*

^{*} *OJ please insert date: three years after the end of the transposition period.*

^{*} *OJ please insert date: thirty months after the entry into force of this Directive.*

3. The Commission shall forward the information provided for in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on the information provided by Member States."

Article 47b
Amendment of Directive 1999/44/EC

In Directive 1999/44/EC, the following Article is inserted:

"Article 8a

1. Where a Member State adopts more stringent consumer protection provisions provided for in Article 5(1) to (3) and in Article 7(1), it shall inform the Commission thereof, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website.

3. The Commission shall forward the information provided for in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on the information provided by Member States."

Article 49
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 50
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF WITHDRAWAL

*A. Model instructions on withdrawal**Right of withdrawal*

You have the right to withdraw from this contract within 14 calendar days without giving any reason.

The withdrawal period will expire after 14 days from the day ^[1]

To exercise the right of withdrawal, you shall inform us ⁽²⁾ of your decision to withdraw by an unequivocal statement (e.g. written letter sent by post, fax, email). You may use the attached model withdrawal form, but it is not obligatory. ^[3]

To meet the deadline, it is sufficient if you send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Consequences of withdrawal

If you withdraw, we shall reimburse all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us) without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.^[4]

^[5]

^[6]

Instructions for completion:

1 Here the following is to be inserted:

- a) *in the case of a service contract or a contract for the supply of water, gas, electricity, where they are not put up for sale in a limited volume or set quantity, district heating, or digital content which is not supplied on a tangible medium: "of the conclusion of the contract.";*
- b) *in the case of a sales contract: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.";*
- c) *in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.";*
- d) *in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.";*
- e) *in the case of a contract for regular delivery of goods during defined period of time: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.".*

2 Here your name, geographical address and, where available, your telephone number, fax number and email address are to be inserted.

3 Here the following is to be inserted if you give the option to the consumer to electronically fill in and submit information about his withdrawal on your website: *"You can also electronically fill in and submit the model withdrawal form or any other unequivocal withdrawal statement on our website [insert internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by email) without delay."*

4 Here the following is to be inserted in the case of sales contracts in which you have not offered to collect the goods in case of withdrawal: *"We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest."*

5 Here the following is to be inserted if the consumer has received goods in connection with the contract:

a insert either:

- *"We will collect the goods."; or*
- *"You shall send back the goods or hand them over to us or ____ [insert the name and geographical address, where applicable, of the person authorised by you to receive them], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal to us. The deadline is met if you send back the goods before the period of 14 days has expired."*

b insert either:

- *"We will bear the cost of returning the goods."; or*
- *"You will have to bear the direct cost of returning the goods."; or*
- *If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct cost of returning the goods, ___ EUR [insert]."; or if the cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct cost of returning the goods. The cost is estimated to a maximum of approximately ___ EUR; or*
- *If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense."]*

c *"You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods."*

6 *In the case of a contract dealing with the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, the following is to be inserted: "If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal, in comparison with the full coverage of the contract."*

B. Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

– To **[here the trader's name, geographical address and, where available, his fax number and email address are to be inserted by the trader]**:

- I/We* hereby give notice that I/We* withdraw from my/our* contract of sale of the following goods*/provision of the following service*
- Ordered on*/received on*
- Name of consumer(s)
- Address of consumer(s)
- Signature of consumer(s) (only if this form is notified in writing)
- Date

* Delete as appropriate.

Repealed Directives with the list of its successive amendments
(referred to in Article 47)

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises	OJ L 372, 31.12.1985, p. 31.
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Directive 97/7/EC of the European Parliament and of the Council	OJ L 144, 4.6.1997, p. 19.
Directive 2002/65/EC of the European Parliament and of the Council	OJ L 271, 9.10.2002, p. 16.
Directive 2005/29/EC of the European Parliament and of the Council	OJ L 149, 11.6.2005, p. 29.
Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007	OJ L 319, 5.12.2007, p. 1.