



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 December 2010

16933/10

**Interinstitutional File:
2008/0196 (COD)**

**CONSUM 112
JUSTCIV 212
CODEC 1379**

"A" ITEM NOTE

from : General Secretariat of the Council

to : Council

No. Cion prop. : 14183/08 CONSOM 140 JUSTCIV 220 CODEC 1315

Subject : Proposal for a Directive of the European Parliament and of the Council on
consumer rights
- General approach

I. INTRODUCTION

1. On 13 October 2008, the Commission submitted to the European Parliament and the Council its proposal¹ based on article 95 of the EC Treaty (Article 114 of the Treaty on the Functioning of the European Union).
2. On 8 November 2008, the Council decided to consult the Economic and Social Committee, which issued its opinion² on the matter on 16 July 2009 (the rapporteur was Mr Bernardo Hernandez Bataller (ES/Group III)).

¹ 14183/08 (COM/2008/614 final - COD 2008/0196).

² JO C 317 of 23.12.2009, p.54.

3. In its meeting of 21 and 22 April 2009, the Committee of the Regions adopted its own initiative report³ (the rapporteur was Mr Wolfgang G. Gibowski (DE/PPE)).
4. The European Parliament is expected to adopt its position at the first reading at the plenary of March 2011.

II. WORK WITHIN THE COUNCIL

5. The proposal was examined during the French, Czech, Swedish, Spanish and Belgian Presidencies. A progress report was presented at the Competitiveness Council of May 2009 and two policy debates were organised at the Competitiveness Councils of December 2009 and May 2010.
6. Following the Coreper meeting of 8 December 2010, a qualified majority supported the Presidency compromise text which is attached to the present note.

MT, ES and SK announced their opposition to the text and DE maintained a scrutiny reservation. Statements of delegations that will be entered into the minutes of the Council meeting are in the addendum 1 to this note.

III. CONCLUSION

7. The Council is invited to:
 - agree by a qualified majority on a general approach on the proposal of Directive, as set out in the Annex;
 - enter into its minutes the statements made by delegations that are in the addendum to this document;
 - mandate the Presidency to pursue negotiations with the European Parliament with a view to reaching an agreement at first reading.

³ JO C 200 of 25.8.2009, p. 76.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on consumer rights in distance and off premises contracts
(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 Commission⁴,

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises⁶, 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 contracts⁷ 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 this single Directive. This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ L 372, 31.12.1985, p. 31.

⁷ OJ L 144, 4.6.1997, p. 19. Directive, as last amended by Directive 2007/64/EC (OJ L 319, 5.12.2007, p. 1).

- (3) Article 169(1) and (2)(a) of the Treaty 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) of the Treaty, the internal market comprises 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 the respect of 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 by consumers. 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 of 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 (e.g. 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 size enterprises (including individual entrepreneurs) 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 the better functioning of the business to consumer internal market.

- (6) The existing Union legislation in the field of consumer contracts concluded at a distance or away from business premises establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on such contracts diverge significantly.
- (7) These disparities create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines consumer confidence in the internal market. The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the Union. This problem is particularly acute in the light of new market developments.
- (8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business 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. These 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 and off-premises contracts and relating to the right of withdrawal for these 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)⁸.
- (10aa) This Directive should be without prejudice to European Union provisions on specific sectors, such as for example 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.
- (10aaa) The information requirements provided for by this Directive complete the information requirements of the Services Directive⁹ and the E-commerce Directive¹⁰. The possibility for Member States to impose additional information requirements applicable to service providers established in their territory is maintained.

⁸ OJ L 177, 4.7.2008, p. 6.

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

- (10a) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not within its scope. Member States could 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 Article 2(1), such as for example NGOs, start-ups or small businesses. However, these should not be referred to, in national law, as 'consumers' as that would be incompatible with the definition in the Directive. Moreover, Member States may also maintain or introduce national provisions on issues not specifically addressed in the Directive, such as additional rules concerning sale contracts, including in relation to delivery of goods or requirements for the provision of information during the existence of a contract.
- (10b) 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 is without prejudice to national law regulating for instance the conclusion or the validity of a contract (e.g. lack of consent). Similarly, this Directive should not affect the general contractual legal remedies, the rules on public economic order (e.g. rules on excessive or extortionate prices) and the rules on unethical legal transactions.
- (10c) This Directive does not harmonize 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.
- (10ca) 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.

(10d) Digital content, such as computer programs, games or music that is not burned on a tangible medium is not considered as tangible items. It is thus not considered as a good within the meaning of this Directive. On the contrary, media containing digital content such as CD/DVD are tangible items and are thus considered as goods within the meaning of this Directive. The downloading of digital content by a consumer from Internet should be regarded, for the purpose of this Directive, as a contract which falls within the scope of this Directive, but without a right of withdrawal. The Commission should examine the need for harmonised detailed provisions in this respect and submit, if necessary, a proposal for addressing this matter.

(11) [...]

(12) The new definition of distance contract should cover all cases where contracts are concluded, 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. Thus, a contract which is initiated 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 fact that the trader is an occasional distance seller or that he uses an organised scheme run by a third party such as an online platform, should not deprive consumers of their protection. This should create a level playing field for all distance traders. It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.

(13) [...]

- (14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, 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, no matter whether they have solicited the trader's visit or not. 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 or in spaces accessible to the public. 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 afterwards on the business premises of the trader or through a means of distance communication. 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. **Contracts concluded through the services of a civil law notary when his services are required by law should not be considered as off-premises contracts. A notary, as public officer, has the obligation to inform and advise the consumer. Furthermore, the provisions on off-premises contracts, namely the right of withdrawal, do not fit with the legal framework of notarial deed.**
- (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 according to Article 2(8) should be considered as business premises within the meaning of this Directive.

- (16) The definition of durable medium should include in particular documents on paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard drive of the computer on which the electronic mail or a PDF file is stored. For the purposes of this Directive, an electronic mail should also be covered as far as personal storage is possible for the consumer.
- (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, run by a third person, authorized by law in some Member States, to sell the goods of others at public sale, a so-called auctioneer. The successful bidder is bound to purchase the goods or services. On the contrary, an auction does not imply that the trader and the consumer are present: a mean of distance communication can be used. 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.
- (17) [...]
- (18) [...]
- (19) [...]
- (20) [...]
- (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 means the supply of heat, e.g. 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. Provisions of this Directive are not appropriate for these 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 are retained. The 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 the contracts related to the services of a real estate agent and the contracts related to the rental of accommodation not for 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 case of public transport and taxis, subject to regulation at national level. On the contrary, transport of goods and car rental which are services should benefit from the protection 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 only cover purchases of small significance. Member States may define this value in national legislation provided that it does not exceed EUR 60. When more contracts with related subject 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 reflect 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, amongst others, services for children and youth, assistance services for families, single parents and older persons, 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 recognized by the State but also those provided by private operators. Provisions of this Directive are not appropriate to social services which are thus excluded from its scope.

(20f) Healthcare requires special regulations because of their technical complexity, their importance for services of general interest as well as extensive public funding. Healthcare is defined in the Directive ... on the application on patients' rights in cross-border healthcare 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"¹¹. Health professionals 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 Article 3(1)(a) of Directive 2005/36/EC. Provisions of this Directive are not appropriate to healthcare which is thus excluded from its scope.

¹¹ Text to be adopted.

- (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.
- (21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case 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.
- (22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, which allows him to ascertain the nature and functioning of the goods. As the consumer did not effectively see the goods before the conclusion of the contract, it seems normal to let him test and inspect the goods he wants to buy within the limit of what is necessary to ascertain the nature and functioning of the good. 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) The provisions regarding information and the right of withdrawal for distance sales should, due to the nature of these services, not apply when a consumer uses a public pay phone, pays to use an Internet connection or chooses a specific provider for one single telephone call, for instance by dialling a prefix, in contrast to what is the case for telephone or Internet subscriptions.

- (22b) In case of online sales and service contracts, the trader should design his website in such a way that the information on the price of the goods or services, the duration of the contract and the costs of using the distance communication is clearly communicated to the consumer before he is bound by the contract.
- (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 fourteen days from the conclusion of a contract. In the case of sales contracts, the withdrawal period should expire fourteen days from the day when the consumer took delivery of the goods, while the consumer should be able to exercise the right to withdraw before the delivery of goods.
- (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 limits¹² 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. For this reason, Article 12(2) determines the starting point of the withdrawal period as the "day after the day".
- (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.

¹² OJ L 124, 8.6.1971, p. 1.

- (25) [...]
- (26) [...]
- (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 six-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 businesses selling cross-border. The introduction of a harmonised standard 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 standard form relating for example to the font size. However, the consumer should remain free to withdraw in using his own words, as long as his statement to the trader is unequivocal. Sending back the goods, a letter or a telephone call could answer to this requirement, but the burden of proof of having withdrawn within the delays 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 by email without delay.
- (30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer. The reimbursement should not be done by voucher unless the consumer has expressly agreed otherwise.

- (31) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to ascertain the nature 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 ascertain the nature 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) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen 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 personalized such as 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. This applies to service contracts as well as to contracts having as their object both services and goods. 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 already provided service.

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(36) [...]

(37) [...]

(37b) 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 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. Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. The rule regarding the late delivery may 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 has been foreseen. 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 and in certain circumstances, where the delivery period is essential such as, for example, a wedding dress which should be delivered before the wedding or Christmas presents. 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 ask for damages.

(38b) 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 foresees 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 it. The rule introduced on the passing of risk should however not apply where the consumer unduly delays to acquire the physical possession of the goods. In those circumstances, the consumer should bear the risk of loss or deterioration from the moment when he should have acquired the physical possession of the goods. This rule should not apply if the failure is caused by unforeseeable circumstances beyond the consumer's control. When assessing at what point the consumer should have acquired the physical possession of the goods, the nature of the goods, for instance if they are perishable, should be taken into account.

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(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 these 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 on the law applicable to contractual obligations (Rome I) should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (60) The European Commission 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')¹³ 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.
- (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.

¹³ OJ L 149, 11.6.2005, p. 22.

- (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. 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.
- (64) Directives 85/577/EEC and 97/7/EC should be repealed.
- (65) Since the objectives of this Directive 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. 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 eliminate the internal market barriers and achieve a high common level of consumer protection.
- (66) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,
- (67) In accordance with point 34 of the Interinstitutional agreement on better law making¹⁴, 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,

¹⁴ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Chapter I
Subject matter, definitions and scope

Article 1

Subject matter

The purpose of this Directive is to contribute to the proper functioning of the internal market and to a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning distance and off-premises 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 or legal person, who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession;
- (3) 'sales contract' means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price, including any contract having as its object both goods and services;

- (4) 'goods' means any tangible movable item, with the exception of goods sold by way of execution or otherwise by authority of law;
- (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 sales or service contract concluded 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;
- (7) [...]
- (8) 'off-premises contract' means any sales or service contract:
- (a) concluded in the simultaneous physical presence of the trader or anyone acting in the name and on behalf of the trader and the consumer, in a place which is not the business premises of the trader or for which an offer was made by the consumer in the same circumstances, 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 or of anyone acting in the name and on behalf of the trader and the consumer, or
 - (c) concluded during an excursion organised by the trader or anyone acting in the name and on behalf of the trader with the aim or effect of promoting and selling goods or services to the consumer.

Contracts established by a civil law notary when his services are required by law shall not be considered as off-premises contracts.

- (9) 'business premises' mean:
- (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;
- (11) [...]
- (12) [...]
- (13) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (14) [...]
- (15) [...]
- (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 competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;
- (17) [...]
- (18) [...]
- (19) [...]

- (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 these 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 distance and off-premises contracts between a trader and a consumer. It shall also apply to distance and off-premises contracts for the supply of water, gas, electricity and district heating.
- 1a. This Directive shall not apply to distance and off-premises contracts:
 - (a) for the transfer of immovable property, the transfer of rights in immovable property or the creation of such rights;
 - (aa) for construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
 - (b) for financial services;
 - (c) for passenger transport services;
 - (d) for social services relating to social housing, childcare and support, of families and persons permanently or temporarily in need, including long-term care;

- (dd) for healthcare as defined in Directive ... on the application of patients rights in cross-border healthcare¹⁵, whether or not they are provided via healthcare facilities;
- (e) 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 contracts;
- (f) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;¹⁶
- (g) for gambling;
- (h) 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.

2. [...]

3. [...]

4. 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 and Directive 2000/31/EC of the European Parliament and of the Council and do not prevent Member States from imposing additional information requirements in accordance with Directive 2006/123/EC of the European Parliament and of the Council and Directive 2000/31/EC of the European Parliament and of the Council.

¹⁵ Text to be adopted.

¹⁶ OJ L 158, 23.6.1990, p. 59.

Without prejudice to subparagraph 1, if a provision of Directive 2006/123/EC of the European Parliament and of the Council and Directive 2000/31/EC of the European Parliament and of the Council 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.

- 4a. If the provisions of this Directive conflict with a provision of another Union act governing specific sectors, the provision of the other Union act shall prevail and shall apply to those specific sectors.
5. 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.
6. This Directive shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided 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.

Article 4a

Exempted distance and off-premises contracts

1. Member States shall not apply this Directive nor maintain or introduce corresponding national provisions to:
 - (a) distance contracts concluded by means of automatic vending machines or automated commercial premises;
 - (b) distance contracts 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.

2. Member States may decide not to apply this Directive nor maintain or introduce corresponding national provisions to off-premises contracts under which the value of the contract or contracts concluded at the same time do not exceed EUR 60. Member States may define a lower value in the national legislation. Member States shall notify the adopted threshold to the Commission which shall make that information public in an easily accessible way.

3. For the purposes of this Directive, those Member States who convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on the date of adoption of this Directive.

Member States may round off the amounts resulting from the conversion provided that such rounding off does not exceed EUR 1.

Chapter II

Consumer information

[...]

Chapter III

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

Article 8

Scope

[...]

Article 9

Information requirements for distance and off-premises contracts

1. Before the consumer is bound by any contract or offer, the trader shall provide the consumer in clear and comprehensible manner with the following information:
 - (a) the main characteristics of the goods or services, to an 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 details enabling the consumer to contact him rapidly and communicate with him directly and, as the case may be, by electronic means and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
 - (c) if different from his geographical address, 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 address any complaints;

- (caa) the price inclusive of taxes, or where the nature of the goods or services means that the price cannot 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 these cannot reasonably be calculated in advance, the fact that such additional charges and costs may be payable. In case of a service contract containing a subscription, the price shall include the total subscription costs per periodical time unit. Where the total subscription cost cannot be calculated in advance, the manner in which the price is calculated should be provided;
- (ca) the cost of using the means of distance communication where it is calculated other than at the basic rate;
- (d) the arrangements for payment and the time and modalities for delivery of goods or for performance of the services;
- (e) where a right of withdrawal applies, the conditions, time limit and procedures for exercising that right in accordance with Annex I(A), as well as the standard withdrawal form set out in Annex I(B);
- (ea) where the consumer could exercise the right of withdrawal after having made a request pursuant to Article 10(2a) or 11(4a), that the consumer would be liable to pay the trader reasonable costs according to Article 17(4);
- (f) where a right of withdrawal does not apply in accordance with Articles 19(1), the information that the consumer will not benefit from a right of withdrawal;
- (g) the duration of the contract and the minimum duration of the consumer's obligations where applicable or if the contract is open-ended, the conditions for terminating the contract;
- (h) the existence of the legal guarantee;
- (i) the existence of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader, where applicable;
- (j) the existence and the conditions of after sale customer assistance, after-sales services, commercial guarantees and complaint handling policy where applicable;
- (k) the possibility for out-of-court dispute resolution, where applicable.

- 1aa. The information referred to in Article 9(1) shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise.
- 1a. If the trader has not complied with the information requirements on additional charges or other costs as referred to in Article 9(1)(caa), the consumer shall not pay the additional charges and costs.
- 1ab. The information in Article 9(1)(e) and (ea) may be provided by means of the Model withdrawal information form set out in Annex I(A). The trader shall be deemed to have fulfilled the information requirements in Article 9(1)(e) and (ea) if he has supplied this form.
2. Member States may maintain or introduce in their national law linguistic requirements regarding the contractual information.
3. The burden of proof of compliance with the information requirements set out in this Chapter shall be incumbent on the trader.

Article 10

Formal requirements for off-premises contracts

1. The information provided for in Article 9 shall be provided on a durable medium in plain and intelligible language and be legible. The trader shall provide this information on paper if the consumer requests so.

- 1a. 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.
2. The consumer shall receive confirmation of the contract concluded on a durable medium. The trader shall provide this confirmation on paper if the consumer requests so.
- 2a. Where a consumer wishes the provision of services or the provision of water, gas, electricity or district heating to begin during the withdrawal period provided for in Article 12(2)(a), the trader shall require that the consumer makes such a request on a durable medium.
3. Member States shall not impose any pre-contractual formal requirements other than those provided for in paragraphs 1 to 2a.

Article 11

Formal requirements for distance contracts

1. The information provided for in Article 9 shall be given in a way appropriate to the means of distance communication used. This information shall be provided in plain and intelligible language and, insofar as it is provided on a durable medium, be legible.
- 1aa. 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.

- 1a. With respect to distance contracts to be concluded by electronic means, which would place the consumer under an obligation to make a payment, the consumer shall be bound by the contract only upon his explicit confirmation of the information provided for in Article 9(1)(caa), (ca) and (g).
2. [...]
3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide the information regarding the main characteristics of the goods or services, the total price, the duration of the contract and, if the contract is open-ended, the conditions for terminating the contract, referred to in Articles 9(1)(a), (caa) and (g) on that particular medium prior to the conclusion of such a contract. The trader shall also inform the consumer where all the information referred to in Article 9 is available. 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.
- 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, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person, on whose behalf he makes a phone call, and the commercial purpose of the call. Member States may introduce or maintain provisions of national legislation providing that the trader, when he has taken the initiative for the contact, has to confirm the offer to the consumer who is committed only once he has signed the offer or sent his written consent. Member States shall notify those provisions to the Commission which shall make this information public in an easily accessible way.

4. The consumer shall receive confirmation of the contract concluded 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 when the performance of the service has begun, 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 provision of services, or the provision of water, gas, electricity or district heating to begin during the withdrawal period provided for in Article 12(2)(a), 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 pre-contractual formal requirements other than those provided for in paragraphs 1 to 4a.

Article 12

Right of withdrawal

1. Subject to exceptions referred to in Article 19, the consumer shall have the right to withdraw from a distance or off-premises contract, without giving any reason, and without any costs other than those foreseen in Article 17.
2. Without prejudice to Article 13, the withdrawal period shall expire after fourteen days from:
 - (a) in the case of service contracts, the day after the day of the conclusion of the contract;
 - (b) in the case of sale contracts, the day after the day when the consumer has taken delivery of goods;

- (c) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day after the day when the consumer has taken delivery of each of the goods ordered;
- (d) in the case of delivery of a good consisting of multiple lots or pieces, the day after the day on which the consumer has taken delivery of the last lot or piece;
- (e) in the case of contracts for regular delivery of goods during defined period of time, the day after the day on which the consumer has taken delivery of the first good;
- (f) in the case of contracts for the supply of water, gas, electricity and district heating, the day after the day of the conclusion of the contract.

[...]

3. [...]

4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period. Nevertheless, in the case of off-premises contracts, Member States may introduce or maintain in their national legislation an interdiction of payment during the withdrawal period. Member States shall notify those provisions to the Commission which shall make this information public in an easily accessible way.

Article 13

Omission of information

- 1. If the trader has not provided the consumer with the information in breach of points (a), (b), (caa), (e) or (ea) of Article 9(1) or in breach of Articles 10(1) or 11(4), the withdrawal period shall expire after six months from the day referred to in Article 12(2).
- 2. If the trader has provided the consumer with the information provided for in paragraph 1 within six months from the day referred to in Article 12(2), the withdrawal period shall expire fourteen days from the day where the consumer receives the information.

Article 14

Exercise of the right of withdrawal

1. The consumer shall inform the trader of his decision to withdraw at the address indicated by the trader in accordance with Annex I(A) before the expiry of the withdrawal period. The consumer may use the standard withdrawal form as set out in Annex I(B) or any other unequivocal statement addressed to the trader.

Member States shall not provide for any other formal requirements applicable to this standard withdrawal form.

- 1a. The deadline referred to in Articles 12(2) and 13 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the withdrawal 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 the standard withdrawal form on the trader's website. In that case the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.
- 2a. The burden of proof of exercising the right of withdrawal in accordance with the provision made in 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 an 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 without undue delay and no later than fourteen days from the day on which he receives the communication of withdrawal.
2. Unless the trader has offered to collect the goods himself, for contracts for the sale of goods, 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. If the consumer exercises the right of withdrawal, he 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 no later than fourteen days from the day on which he informs the trader of the withdrawal, 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 fourteen days has expired.

The consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear that cost.

In 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 cost collect the goods if the goods by their nature cannot be normally returned by post.

2. Without prejudice to the second sub-paragraph of paragraph 1, the consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal right in accordance with Article 9(1)(e).
3. Where a consumer exercises the right of withdrawal after having made a request in accordance with Article 10(2a) or Article 11(4b), the consumer shall pay to the trader an amount which is in proportion to the extent of the services 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.
4. The consumer shall bear no cost for services performed, in full or in part, during the withdrawal period where the trader has failed to provide information in accordance with Articles 9(1)(e) and 9(1)(ea), or where the consumer has not requested the performance of the service to begin during the withdrawal period in accordance with Articles 10(2a) and 11(4a).

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.
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) [...]
 - (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;
 - (c) the supply of goods made to the consumer's specifications or clearly personalized ~~or~~;
 - (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 by the consumer;
 - (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 beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
 - (e) the supply of sealed audio or video recordings or computer software which were unsealed by the consumer;
 - (f) the unit supply of a newspaper, periodical or magazines excluding any form of subscription;
 - (g) [...]
 - (h) contracts concluded at a public auction;

- (i) 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;
- (j) services contracts concluded by electronic means and performed immediately and fully through the same means of distance communication such as downloading from the Internet, where the performance has begun with the consumer's prior express consent.

2. [...]

3. [...]

Chapter IV

[...]

Article 20

Excluded distance and off-premises contracts

[...]

Article 21

Scope

[...]

Article 22

Delivery

1. Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay after the conclusion of the contract.

2. Where the trader has failed to fulfil his obligation to deliver 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 is entitled to terminate the contract.
- 2a. Paragraph 2 is not 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.
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.
- 3a. This Article shall not apply to contracts for the supply of water, gas, electricity and district heating, where they are not put up for sale in a limited volume or set quantity.

Article 23

Passing of risk

1. In contracts where the trader dispatches the goods to the consumer, the risk of loss or damage to the goods shall pass to the consumer when he or a third party, other than the carrier and designated by the consumer for this purpose has acquired the physical possession of the goods.
2. This Article shall not apply to contracts for the supply of water, gas, electricity and district heating, where they are not put up for sale in a limited volume or set quantity.

Article 24

Conformity with the contract

[...]

Article 25

Legal rights Liability for lack of conformity

[...]

Article 26

Remedies for lack of conformity

[...]

Article 27

Costs and damages

[...]

Article 28

Time limits and burden of proof

[...]

Article 29

Commercial guarantees

[...]

Chapter V

Consumer rights concerning contract terms

[...]

Chapter VI

General provisions

Article 40
The Committee
[...]

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 Article 46 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 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 a good or unsolicited provision of service as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. 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 [insert the date two years after the entry into force of this Directive] 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 those provisions.

They shall apply those provisions from [insert the date thirty months after the entry into force of this Directive].

When Member States adopt those provisions, 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.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. The provisions of this Directive shall apply to contracts concluded after [insert the date thirty months after the entry into force of this Directive].

Chapter VII
Final provisions

Article 47
Repeals

Directives 85/577/EEC and 97/7/EC, as amended by the Directives listed in Annex IV, are repealed with effect from [insert the date thirty months after the entry into force of this Directive].

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 V.

Article 48

Review

The Commission shall review this Directive and report to the European Parliament and the Council no later than [insert same date as in the second subparagraph of Article 46(1) + five years].

If necessary, it shall make proposals to adapt it to new developments. The Commission may request information from the 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 Brussels,

For the European Parliament

The President

For the Council

The President

INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF WITHDRAWAL

A. Information notice to be provided with the withdrawal form

[...]

Right of withdrawal

The consumer shall have the right to withdraw from this contract within fourteen calendar days without giving any reason.

The withdrawal period shall expire fourteen days from the day after the day [1]

To exercise the right of withdrawal, the consumer shall inform the trader [2] of his decision to withdraw from the contract by using a durable medium (e.g. written letter sent by post, fax, email). The consumer may use the following model withdrawal form, but it is not obligatory or any other unequivocal statement addressed to the trader. [3]

To meet the withdrawal deadline, it shall be sufficient if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the withdrawal period has expired.

Consequences of withdrawal

If the consumer exercises his right of withdrawal, the trader shall reimburse all payments received from the consumer without undue delay and no later than fourteen days from the day on which he receives the communication of withdrawal. [4]

[5]

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 or district heating: "of the conclusion of the contract.";
 - b) in the case of a sales contract: "when the consumer has taken delivery of goods.";
 - c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "when the consumer has taken delivery of each of the goods ordered.";
 - d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which the consumer has taken delivery 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 the consumer has taken delivery of the first good."
- 2 Here the name, geographical address and email address of the trader are to be inserted.
- 3 Here the following is to be inserted if the trader gives the option to the consumer to electronically fill in and submit the model withdrawal form on the trader's website: "The consumer shall also have the option to electronically fill in and submit the model withdrawal form on the trader's website [insert internet address]. If the consumer uses this option, the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay."
- 4 Here the following is to be inserted in the case of a contract for the sales of goods: "Unless the trader has offered to collect the goods himself, he 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."

5 Here the following is to be inserted if the consumer has received goods in connection with the contract: "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 no later than fourteen days from the day on which he informs the trader of the withdrawal, 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 fourteen days has expired. The consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear that cost. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods." In 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 following is to be inserted: "The trader shall collect the goods at his own cost if the goods by their nature cannot be normally returned by post." In the case of a contract dealing with the provision of services or the provision of water, gas, electricity or district heating the following is to be inserted: "If the consumer has requested to begin the provision of services/water/gas/electricity/district heating [delete where inapplicable] during the withdrawal period, he shall pay to the trader a reasonable amount which shall not exceed an amount which is in proportion to the extent of the services 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.

B. Standard withdrawal form

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

- To:

 - 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.
- _____

CONTRACT TERMS WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

[...]

CONTRACT TERMS WHICH ARE PRESUMED TO BE UNFAIR

[...]

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.
[...]	[...]
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
[...]	[...]