



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 December 2009

17397/09

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

LIMITE

**CONSUM 238
JUSTCIV 254
CODEC 1441**

NOTE

from :	General Secretariat of the Council
to :	Working Party on Consumer Protection and Information

No. prev. doc. :	11565/09 CONSUM 141 JUSTCIV 166 CODEC 935
	12721/09 CONSUM 166 JUSTCIV 181 CODEC 1046
	15166/09 CONSUM 203 JUSTCIV 221 CODEC 1250
No. Cion prop. :	14183/08 CONSUM 110 JUSTCIV 220 CODEC 1315

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

Delegations will find attached the Presidency text on the above-mentioned proposal.

The additions with respect to the Commission's proposal are marked in **bold** and deletions with ~~strikethrough~~.

The additions with respect to previous documents 11565/09, 12721/09 and 15166/09 are marked in **bold** and deletions with ~~bold~~.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises⁴, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁵, 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 contracts⁶, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees⁷, lay down a number of contractual rights for consumers.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 372, 31.12.1985, p. 31.

⁵ OJ L 95, 21.4.1993, p. 29.

⁶ 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).

⁷ OJ L 171, 7.7.1999, p. 12.

- (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 four 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.
- (3) Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof.
- (4) In accordance with Article 14(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 contract law 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 laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing Community legislation in the field of consumer contracts concluded at a distance or away from business premises' consumer goods and guarantees as well as unfair contract terms 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 consumer contract law 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 Community. 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 Community. 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 Community level. Furthermore consumers will enjoy a high common level of protection across the Community.
- (9) The field harmonised by this Directive should cover certain aspects of business to consumer contracts. ~~These are~~ **The regulated aspects include** rules on information to be provided before conclusion and during performance of the contract, the right of withdrawal for distance and off-premises contracts, consumer rights specific to contracts of sale and unfair contract terms in consumer contracts.

(9a) ~~This Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not within its scope.~~ *[Moved to recital 10a)]*

(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 **and to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)⁹. Furthermore, this Directive should be without prejudice to the provisions on the conclusion of electronic contracts and the placing of electronic orders as set out by Articles 9 and 11 of 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 (Directive on electronic commerce)¹⁰.**

(10a) This Directive should be without prejudice to the application by Member States, in accordance with Community law, of 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.

(11) The existing Community legislation on consumer financial ~~and transport~~ services contains numerous rules on consumer protection. **The construction of new buildings and the transfer of rights in immovable property, including sales as well as rental of accommodation for residential purposes, but not rental of holiday accommodation, are subject to a number of specific requirements in national legislation.** For ~~this~~ **these** reasons **only** the provisions of this Directive **on unfair contract terms should** cover **such** contracts relating to financial ~~and transport~~ services, only insofar as this is necessary to fill the regulatory gaps.

⁸ OJ L 177, 4.7.2008, p. 6.

⁹ OJ L 201, 31.7.2002.

¹⁰ OJ L 178, 17.7.2000, p. 1.

- (12) The new definition of distance contract should cover all cases where ~~sales and service~~ contracts are concluded, **for the purpose of which the trader and the consumer make** ~~using exclusively~~ **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.** 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) ~~The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. 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. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.~~

- (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 are~~ **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 that is not the business premises of the trader, for example at the consumer's home or workplace or in spaces accessible to the public.** ~~Furthermore, in order to prevent circumventions of the rules when consumers are approached away from business premises, a contract negotiated at the consumer's home but concluded in a shop should be regarded as an off-premises contract.~~ **The definition of an off-premises contract should also include situations where an offer is made in such circumstances but the contract is concluded on the business premises of the trader. In order to avoid administrative burden, the specific provisions regarding information and a right to withdrawal for off-premises sales should not apply in cases where goods of a minor value are sold off premises. The monetary threshold should be established at a low level as to only cover purchases of small significance.**
- (15) Business premises should include premises in whatever form (such as shops, **stalls** or lorries) which serve as a permanent place of business for the trader. Market stalls and fair stands should be treated as business premises even though they may be used by the trader on a temporary basis. **Immovable or movable retail premises where the trader carries out his activity on a seasonal basis, for instance at a ski or beach resort, should be treated as business premises.** Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, ~~all spaces accessible to the public, spaces including~~ **such as streets, shopping malls, beaches, sports facilities and public transport, or facilities that the trader uses on a temporary basis for his business activities** as well as private homes or workplaces should not be regarded as business premises. **Purchases made during an excursion organised by the trader away from his business premises would be regarded as being made off-premises.**¹¹

¹¹ Some Member States are concerned that contracts concluded in a notary's office as well as agreements in a Court might be considered as off-premises contracts.

- (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. **However, for the purposes of this Directive, an electronic mail should also be covered.**
- (17) Consumers should be entitled to receive information before the conclusion of the contract. However traders should ~~not have to~~ **only** provide the **relevant** information when **it is not** already apparent from the context. For example in an on-premises transaction, the main characteristics of ~~a product~~ **the goods or services**, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off-premises transactions, the trader should always provide ~~the~~ **certain** information, **such as** on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.
- (17a) ~~Provisions on information requirements should not apply to specific contracts, such as contracts for financial services, transport services or social services.~~**
- (18) 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.
- (19) In the case of public auctions, due to the nature and tradition of that sales method, the auctioneer may instead of communicating the geographical address and the identity of the seller for whom he is selling the goods replace that with his own contact details.
- (20) The consumer should know whether he is contracting with the trader or with an intermediary acting on behalf of another consumer, since in the latter case the consumer may not enjoy the protection under this Directive. Therefore the ~~intermediary~~ **trader** should inform the consumer of this fact and the consequences thereof. ~~The notion of intermediary should not include online trading platforms which do not conclude the contract in the name of or on behalf of any other party.~~ **This information requirement should not have any impact on the performance of the contract between the trader and the consumer on whose behalf the trader is acting and to which this Directive should apply.**

- (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. **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 retroactively.**
- (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,**
- (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 principle, the withdrawal period should expire fourteen days from the conclusion of a contract. However, in case of contracts for ~~supply~~ sale of goods, the withdrawal period should expire fourteen days from the time when the consumer took delivery of the goods ~~were delivered~~.**

- (23a) ~~When the consumer orders more than one piece of the goods from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately, the withdrawal period should start when the consumer acquires the physical possession of each individual piece of the goods. Where the goods are delivered in different lots or pieces, the withdrawal period should start when the consumer or a third party indicated by the consumer acquires the physical possession of the last lot or piece. [Moved to article 12]~~
- (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.
- (25) ~~The rules on distance contracts should 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 of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)~~¹³.
- (26) ~~When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately, the withdrawal period should start when the consumer acquires the material possession of each individual good. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer or a third party indicated by the consumer acquires the material possession of the last lot or piece.~~
- (27) If the trader has not informed the consumer on the right of withdrawal 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 three-month limitation period should be introduced, ~~provided that the trader has fully performed his contractual obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods or has fully provided the services ordered by the consumer.~~

¹² OJ L 124, 8.6.1971, p. 1.

¹³ OJ L 178, 17.7.2000, p. 1.

- (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 ~~to be used by~~ **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 Community-wide standard form relating for example to the font size. **However, the consumer should remain free to withdraw while using his own words, as long as his statement is explicit and provided on a durable medium.**
- (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.
- (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 or try 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 use the goods with due care during the withdrawal period.** ~~In order to ensure the effectiveness of the withdrawal right in service contracts, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the immediate performance of the service before the expiration of the withdrawal period, consumers should bear no cost for such a service.~~

- (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 general contract law provisions.**
- (33) Certain exemptions should exist from the right of withdrawal, **both for distance and off-premises contracts.** ~~such as in cases where~~ A right of withdrawal ~~would~~ **could** be inappropriate **for example** given the nature of the ~~product~~ **goods or services**. That is applicable for example to wine ~~beverages~~ 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 application of a right of withdrawal could be also be** inappropriate for certain services ~~relating to accommodation and leisure.~~ where the **The conclusion of the e**~~corresponding~~ **contracts 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. Neither should there be a right of withdrawal in the case of supermarket home delivery schemes where the consumer, for instance on Internet, besides food and drinks may command other goods intended for current consumption in the household. These are goods which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household. [Sentence moved from recital 37] However, for distance contracts concluded with traders running a business that sells such goods intended for current consumption in the household, but not in combination with food and drinks, the right of withdrawal applies.**

- (33a) Considering that the consumer when withdrawing from a service contract ~~concluded off-premises~~ is not obliged to pay for the services provided, certain service providers might prefer not to perform until the withdrawal period has expired to ensure being paid. Therefore a consumer should be able to request the provision of services before the end of the withdrawal period, ~~for instance for urgent repairs~~, by making a specific request on a durable medium. He ~~would then still~~ should retain the right to withdraw from the contract during the withdrawal period, but should be prepared, to bear the reasonable costs for any services provided up to the point of withdrawal from the contract. Before the performance begins the trader should ~~provide~~ inform the consumer on a durable medium ~~with a notification of any obligation to pay such costs on a durable medium~~. ~~In case of distance contracts, if the consumer gives his express consent for the performance of the service (e.g. data files downloaded by the consumer during that period) to begin before the end of the withdrawal period, it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Consequently, he should lose his right to withdraw but he must be informed thereof accordingly in advance. In case the consumer is not informed, he should bear no costs for performance of the service performed in full or in part.~~
- (34) ~~Furthermore, in case of distance contracts for the provision of services, for which the performance begins during the withdrawal period (e.g. data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement.~~
- (35) ~~The Commission has found some key consumer problems in the home improvement sector where consumers are under high pressure to order expensive renovation works. The scope of the information and withdrawal rules should be clarified and extended in order to cover this kind of contract. Only contracts for the conveyance of interests in real property should be excluded from the scope of the rules on information and withdrawal rights applicable to distance and off-premises contracts.~~

- (36) ~~The application of a right of withdrawal may be inappropriate for certain services relating to accommodation, transport and leisure. The conclusion of the corresponding contracts implies the setting aside of capacity which, if a right of withdrawal was introduced, the trader may find difficult to fill. Therefore these distance contracts should not be covered by the provisions on consumer information and the right of withdrawal.~~
- (37) ~~For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of off premises contracts, except under strictly defined circumstances which can easily be proved. Therefore, no right of withdrawal should apply for~~ **There are situations in case of off-premises contracts where the consumer should have no right of withdrawal, such as** ~~urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation as well as for supermarket home-delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household~~ **[Sentence moved to recital 33]** ~~and should therefore not be subject to a right of withdrawal.~~
- (37a) ~~The main difficulties encountered by consumers and 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 delivery and passing of risk.~~ **[Sentences moved to recital 37c]** **The rules on remedies for non-conformity should apply to contracts for sale of goods where the aim of the contract is to transfer the ownership of the goods from the trader to the consumer. However, the rules concerning the determination of the conditions for and the moment at which the ownership in the goods is transferred, remain subject to national law and are thus not affected by this Directive.**

- (37b) ~~Where a contract has as its object both goods and services, the rules on remedies for non-conformity should apply only to the goods. However, there are contracts for sale of goods which include a minor service performance necessary to fulfil the contract for the sale of goods, for instance where a seller accepts to adjust the goods to fit the consumer or where a seller accepts to install the goods. The rules on remedies for non-conformity should therefore apply also to contracts which include service performances such as installation, assemblage or adjustment.~~
- (37c) The main difficulties encountered by consumers and 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 and passing of risk should occur. The place and modalities of delivery should still be subject to national law.
- (38) In the context of consumer sales, 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. ~~Where the trader fails to deliver in time, the consumer should always be entitled to terminate the contract and request a refund, without prejudice to other remedies available according to the applicable national law.~~ The trader should then be obliged to refund all sums paid and considerations provided by the consumer within a short period of time. For the trader to comply, it should be enough to initiate the refund, within the prescribed time. Any delays not related to him, for instance due to the time for bank transactions, should not be considered. ~~However, it is appropriate to provide that in certain circumstances, for example in cases where the trader would have difficulties to resell customised goods, the consumer may only terminate the contract if the delay is significantly important to him and the trader was, or should have been, aware of that. This might be the case where the good was ordered for a special occasion and due to the delay would not arrive until after the occasion it was aimed for.~~

(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. If the recourse to such remedies is unsuccessful and the consumer still does not receive the goods and therefore decides to terminate the contract, the right to a refund within a short time according to this Directive should apply. The legal consequences of terminating the contract should be subject to national law.

(38b) The consumer should be protected against any risk of loss or damage of the goods occurring ~~when the goods are not within his control~~ before he has taken over the goods. During a transport arranged or carried out by the trader, **this should apply also in situations where the consumer has chosen a particular delivery method from a range of options offered by the trader. However, Normally, a consumer should be considered to have taken over the good when he has received it or has access to it, while this is not the case when he has merely received documents representing it. The rule introduced on the passing of risk should **however** not apply where the consumer unduly delays taking over possession of the goods (for example, ~~when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter~~). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader. ~~from the moment when he reasonably should have taken over possession of the goods.~~ When assessing at what point the consumer should have taken over the goods, the nature of the goods, for instance if they are perishable, should be taken into account. ~~may cause even a short delay to be considered as undue. Situations where the consumer exercises control over the goods, but leaves the goods with the trader, for instance for storage, instead of taking physical possession of them should be regarded as comparable with situations where the consumer has acquired physical possession and the risk should then pass to the consumer.~~**

- (39) The trader should be liable to the consumer ~~if~~ **where** the goods are not in conformity with the contract. The goods should be ~~presumed~~ **not considered** to be in conformity with the contract if ~~unless~~ they satisfy a number of conditions ~~concerning mainly the qualities of the goods.~~ **The elements mentioned in the presumption conditions are cumulative, but if the circumstances of the case render any particular element manifestly inappropriate the remaining elements of the presumption nevertheless still apply.** The quality and performance which consumers can reasonably expect will depend *inter alia* on whether the goods are new or second-hand as well as on the expected life-span of the goods. **Where the consumer was, or should ~~have~~ reasonably have been, aware of a defect on the goods, the consumer shall not be entitled to rely on the provisions on the lack of conformity. However, this should not imply that there is any obligation for the consumer to inspect the goods at the time of delivery beyond a cursory glance. The Directive should not apply to situations where the goods are subject to a third party right that would adversely affect the consumer. Neither does this Directive affect producer's liability. These situations should be subject to national law.**
- (40) If the goods ~~is~~ **are** not in conformity with the contract, ~~firstly,~~ the consumer should **initially** have the possibility to require the trader to repair **or replace** the goods or, ~~to replace them at the trader's choice unless the trader proves that those remedies are~~ **within the first fifteen days as from the day of time when the consumer took delivery, to have the contract terminated provided that the lack of conformity is not minor.** The right to terminate the contract during this initial period may strengthen consumer confidence. **A minor defect is a defect which is trivial in nature, taking account of the type of good and the type of defect. A lack of conformity which is not minor may also concern the appearance or finish of the goods.** ~~However, in order not to introduce an unnecessary burden on the trader, that right to terminate the contract should be limited, where the trader would have difficulties reselling the goods, for instance in relation to customised goods. When considering if repairing or replacing a good would be unlawful, impossible or would~~ causes the trader disproportionate effort, the trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity. The lack of spare parts should not be a valid ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort. **The legal consequences of terminating the contract should be subject to national law.**

- (40a) When the trader has either refused or has once failed to remedy the lack of conformity, the consumer should be entitled to choose freely any of the available remedies. The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity. *[Moved from recital 42]*
- (41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials. Furthermore, ~~The consumer should not only compensate the trader for the use of the defective goods in situations where the contract has been terminated and the consumer has benefited from the use of the goods.~~
- (42) ~~When the trader has either refused or has more than once failed to remedy the lack of conformity, the consumer should be entitled to choose freely any of the available remedies. The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity.~~
- (42a) There should be a general limitation period of two years, during which the trader should be liable for the lack of conformity. However, in cases where the lack of conformity relates to the purpose for which the ~~such~~ goods ~~should be~~ are normally used and the lack of conformity, due to the nature of the goods, is objectively difficult for the consumer to detect, the time limit should be ten years due to the fact that for some goods it is difficult to discover this kind of lack of conformity. This goes should apply for example to for construction materials where the lack of conformity may not show until after a certain time. The ten year time limit should thus not apply in cases where the defect relates to the quality or performance of the good. Lack of conformity in this respect must be assessed within the general limitation period of two years.
- (42b) In order to prevent, when a good is being repaired, spare parts of minor quality being installed, which would cause detriment to consumers, the trader should be liable for the spare parts during the remaining duration of his liability of the main good, but always at least a period of six months after the repair independently of the remaining period during which the trader is liable for the lack of conformity of the main good.

- (42c) **To limit the costs of repair in order not to introduce an unnecessary burden on the trader, the consumer shall within a reasonable time inform the trader of the lack of conformity of a good. Circumstances in the particular case, in relation for instance to the nature of the lack of conformity or the time within which the consumer reasonably could have been expected to contact the trader, are of relevance when deciding if the consumer has acted appropriately.**
- (43) ~~Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.~~
- (44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights. **The consumer should understand from that statement that a commercial guarantee does not deprive him of his rights guaranteed by law.**
- (45) There is a need to protect consumers against unfair contract terms which have not been individually negotiated, such as standard contract terms. The rules on unfair terms should not apply to terms which the consumer agreed upon following a negotiation. Being afforded the possibility to choose between different contract terms which have been drafted by the trader or a third party, **such as chambers of commerce**, on behalf of the trader should not be regarded as a negotiation.
- (46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect **any** mandatory statutory or regulatory provisions of the Member States which comply with Community law. Similarly terms which reflect the principles or provisions of international conventions to which the Community or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

- (47) Consumer contracts **terms** should be **communicated in a clear and comprehensible manner. If a contract term is in writing, it must be** drafted in plain, intelligible language and be legible. **Consequently, hidden contract terms should be considered by their nature as unfair.** Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to ~~read~~ **consider** the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) ~~or attaching standard terms to the order form (in respect of off-premises contracts).~~ **The time period between the opportunity of the consumer to ~~read~~ consider the terms and their acceptance should be assessed while taking into account the circumstances of the contract, such as the object of the contract and the way how the contract is concluded.**
- (47a) The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.
- (48) When making an assessment of good faith, particular regard should be made to the strength of the bargaining positions of the parties, whether the consumer was induced to accept the term and whether the goods or services were sold or supplied on the special order of the consumer. The requirement of good faith may be satisfied by the trader where he deals fairly and equitably with the other party whose legitimate interests he should take into account.
- (49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.

- (50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise. These same lists should apply in all Member States.
- (51) ~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁴.~~
- (52) ~~In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~
- (53) ~~The Commission's power to amend Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.~~
- (54) The Member States may use any concept of national contract law which fulfils the required objective that unfair contract terms should not be binding on the consumer.
- (55) The Member States should ensure that their courts or administrative authorities have at their disposal adequate and effective means of preventing the ~~continued~~ application of unfair terms in consumer contracts, **for the interests of both consumers and traders. The provisions on enforcement in relation to unfair contract terms of this Directive should be complementary to Directive 98/27/EC, especially to the extent that it should prevent also future use of contract terms drafted for general use; further, it provides for legal actions that should be allowed against a number of traders from the same economic sector or their associations.**

¹⁴ OJ L 184, 17.7.1999, p. 23.

- (56) In accordance with the Treaty, the Directive provides for a high level of consumer protection. Nothing in this Directive prevents traders from offering consumers contractual arrangements which go beyond the protection afforded by this Directive.
- (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 they must 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')¹⁵ 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.

¹⁵ 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 Article 10 of Directive 97/7/EC should be deleted.
- (63) It is appropriate to review this Directive if some barriers to the internal market were identified. 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, 93/13/EEC and 97/7/EC and Directive 1999/44/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 Community level, the Community 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 making¹⁶, Member States are encouraged to draw up, for themselves and in the interests of the Community, 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:

¹⁶ OJ C 321, 31.12.2003, p. 1.

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 achieve a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning **certain** 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 and anyone acting in the name of or on behalf of a trader;
- (3) ~~'sales contract' means any contract for the sale of goods by the trader to the consumer including any mixed purpose contract having as its object both goods and services;~~

- (4) 'goods' means any tangible movable item, with the exception of:
- (a) goods sold by way of execution or otherwise by authority of law,
 - (b) water and gas where they are not put up for sale in a limited volume or set quantity,
 - (c) electricity;
- (5) ~~'service contract' means any contract other than a sales contract whereby a service is provided by the trader to the consumer;~~
- (6) 'distance contract' means any ~~sales or service contract where~~ **between concluded without the simultaneous physical presence of the trader and the consumer,** for the ~~conclusion of the contract, makes~~ **concluded with the purpose of which exclusive use is made of one or more means of distance communication up to and including the time at which the contract is concluded.**
- (7) ~~'means of distance communication' means any means which without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties; [merged with (6)]~~
- (8) 'off-premises contract' means **any contract ~~between the trader and the consumer:~~**
- (a) ~~any sales or service contract concluded in a place which is not the away from business premises of the trader with the simultaneous physical presence of the trader and the consumer or any sales or service contract for which an offer was made by the consumer in the same circumstances, or~~
 - (b) ~~any sales or service contract concluded on business premises but negotiated away from business premises, with the simultaneous physical presence of the trader and the consumer, in respect of which an offer was made in the same circumstances referred to in paragraph 8(a) but the contract was concluded on the business premises of the trader;~~

- (9) 'business premises' means:
- (a) any immovable or movable retail premises, ~~including seasonal retail premises~~, where the trader carries on his activity on a permanent ~~or seasonal~~ basis, or
 - (aa) any immovable or movable retail premises where the trader carries on his activity on a seasonal basis,**
 - (b) market stalls and fair stands where the trader carries on his activity on a regular or temporary 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) ~~'order form' means an instrument setting out the contract terms, to be signed by the consumer with a view to concluding an off-premises contract;~~
- (12) ~~'product' means any good or service including immoveable property, rights and obligations;~~
- (13) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (14) ~~'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;~~
- (15) 'auction' means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication and where the ~~highest~~ **best** bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed-price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;

- (16) 'public auction' means a method of sale where goods 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 ~~highest~~ **best** bidder is bound to purchase the goods;
- (17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;
- (18) 'commercial guarantee' means any undertaking, **against consideration or provided for free**, by the trader or producer (the 'guarantor') to the consumer ~~besides~~ **in addition to his legal obligations** to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant ~~advertising~~ **commercial communication** available at the time of, or before the conclusion of the contract;
- (19) ~~'intermediary' means a trader who concludes the contract in the name of or on behalf of the consumer;~~
- (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 ~~sales and service~~ contracts concluded between the trader and the consumer.

2. ~~This Directive shall only apply to financial services as regards certain off premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.~~
3. ~~Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council and of Council Directive 90/314/EEC.~~
4. ~~Articles 5, 7, 9 and 11~~ **This Directive** shall be without prejudice to provisions concerning information requirements contained in **other Community legislation** ~~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.~~
5. **This Directive does not affect national law in the area of general contract law regulating the conclusion or validity of a contract, or the rights of the contracting parties to terminate a contract on the basis of a breach of contract, insofar as this is not harmonised in this Directive.**

Article 4

Full 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].**

[subject to further discussions]

Chapter II

Consumer information

Article 4a

Scope

1. This Chapter shall apply to contracts between the trader and the consumer for ~~supply~~ sale of goods and provision of services. [It shall also apply to contracts for supply of utilities such as water, gas and electricity to the extent that they are not considered as goods according to Article 2(4).]
2. This Chapter shall not apply to contracts:
 - (a) for construction of new buildings¹⁷ or transfer of rights in immovable property, including sale and rental of accommodation for residential purposes;
 - (b) for financial services;
 - (c) ~~for services in the field of transport;~~
 - (d) for social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognized as such by the State;
 - (dd) for healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organized and financed at national level or whether they are public or private;
 - (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 contracts¹⁸;

¹⁷ There seems to be a common view that construction of for instance terraces or garden sheds should be covered by the Directive while some Member States want to widen the exemption also to extensions of existing buildings.

¹⁸ OJ L 33, 3.2.2009, p. 10.

- (f) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours¹⁹;
- (g) related to gaming and lottery services.

Article 5

General information requirements

1. ~~Prior to the conclusion~~ **Before the consumer is bound by** of any sales or service contract or offer ~~covered by this Directive~~, the trader shall provide the consumer in clear and comprehensible manner with the following information, if not already apparent from the context:
- (a) the main characteristics of the ~~product~~ **goods or services**, to an extent appropriate to the medium and the ~~product~~ **goods or services**;
 - (b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
 - (c) the price inclusive of taxes, or where the nature of the ~~product~~ **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 ~~appropriate~~ **applicable**, all additional freight, delivery or postal charges **and any other costs** or, where these ~~charges~~ cannot reasonably be calculated in advance, the fact that such additional charges **and costs** may be payable;
 - (d) the arrangements for payment, delivery, performance and the complaint handling policy, ~~if they depart from the requirements of professional diligence~~;
 - (e) the existence of a right of withdrawal, where applicable;
 - (f) 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 open-ended, the conditions for terminating the contract;

¹⁹ OJ L 158, 23.6.1990, p. 59.

- (h) the minimum duration of the consumer's obligations under the contract, where applicable;
- (i) 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**.

1a. If the trader has not complied with the information requirements on additional charges or other costs as referred to in Article 5(1)(c), the consumer shall not pay these additional charges and costs.

- 2. In the case of a public auction, the information in paragraph 1(b) may be replaced by the geographical address and the identity of the auctioneer.
- 3. The information referred to in paragraph 1 shall form an integral part of the ~~sales or service~~ contract.

Article 6

*~~Failure to provide~~ **Specific information requirements***

- 1. ~~If the trader has not complied with the information requirements on additional charges as referred to in Article 5(1)(c), the consumer shall not pay these additional charges.~~ **concludes a contract with the consumer in the name of or on behalf of another consumer, he shall, in good time before the conclusion of the contract, inform the consumer thereof as well as of the fact that the contract falls outside the scope of this Directive.**
- 2. ~~Without prejudice to Articles 7(2), 13 and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective contract law remedies for any breach of Article 5.~~ **If the trader does not fulfil the obligation as referred to in paragraph 1, he shall be deemed to have concluded the contract in his own name.**

Article 7

Specific information requirements for intermediaries

1. ~~Prior to the conclusion of the contract, the intermediary shall disclose to the consumer, that he is acting in the name of or on behalf of another consumer and that the contract concluded, shall not be regarded as a contract between the consumer and the trader but rather as a contract between two consumers and as such falling outside the scope of this Directive.~~
2. ~~The intermediary, who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.~~
3. ~~This Article shall not apply to public auctions.~~

Chapter III

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

Article 8

Scope

1. This Chapter shall apply to distance and off-premises contracts **for supply sale of goods and provision of services. [It shall also apply to contracts for supply of utilities such as water, gas and electricity to the extent that they are not considered as goods according to Article 2(4).]**
- 1a. This Chapter shall not apply to distance and off-premises contracts:
 - (a) ~~concluded for the construction and sale of new buildings²⁰ or for transfer of rights in immovable property or relating to other immovable property rights, including sale and rental of accommodation for residential purposes but excluding short-term provision of accommodation;~~

²⁰ See footnote 17.

- (b) for financial services;
- (c) ~~in the field of passenger transport services, including public transport and taxi but excluding car rental;~~
- (d) for social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognized as such by the State;
- (dd) for healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;
- (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 ²¹;
- (f) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ²²;
- (g) related to gaming and lottery services.

2. ~~This Chapter shall not apply to distance contracts:~~

- ~~(a) concluded by means of automatic vending machines or automated commercial premises;~~
- ~~(b) concluded with telecommunications operators through public payphones for their use;~~
- ~~(c) the subject of which is one single telephone, Internet or fax connection established by a consumer. [Moved to Article 8a]~~

²¹ OJ L 33, 3.2.2009, p. 10.

²² OJ L 158, 23.6.1990, p. 59.

3. ~~This Chapter shall not apply to off-premises contracts under which the total payments to be made do not exceed a value of 10 EUR. This is not applicable where the contract has been concluded in private homes or workplaces. [Moved to Article 8a]~~

Article 8a

Conversion of amounts expressed in euro into national currency

Excluded distance and off-premises contracts

1. Member States shall not apply this Chapter nor maintain or introduce corresponding national provisions on consumer information and withdrawal right for distance and off-premises contracts 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;
 - (c) off-premises contracts under which the value of the contract or the aggregated value of contracts concluded at the same time ~~total payments to be made do not~~ exceed a value of 10 EUR.
2. 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.

Article 9

Information requirements for distance and off-premises contracts

- 1.** As regards distance or off-premises contracts, the trader shall provide **the consumer in clear and comprehensible manner with** the following information which shall form an integral part of the contract:
- (a) the information referred to in ~~Articles 5 and 7~~ **Chapter II**;
 - (b) where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;
 - (ba) ~~where applicable, in the case of distance contracts, the information that, by giving his prior express consent to the trader to begin the performance of a service in accordance with Article 19(1)(a), the consumer may not use his right of withdrawal;~~
 - (baa) ~~where applicable, in the case of off-premises contracts, the information that, by requesting on a durable medium that the service shall begin to be provided during the withdrawal period, the consumer, in the event of exercising the right to withdraw, will be liable to pay the trader reasonable costs in accordance with Article 10(2b);~~
 - (bb) **where a right of withdrawal does not apply in accordance with Articles 19(1)(b) to (i) or 19(2), the information that the consumer will not benefit from a right of withdrawal;**
 - (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 can address any complaints;
 - (d) the existence of codes of conduct **of relevance for the contract** and how they can be obtained, where applicable;
 - (e) the possibility of ~~having recourse to an amicable dispute settlement~~ **for out-of-court dispute resolution**, where applicable.
 - (f) ~~that the contract will be concluded with a trader and as a result that the consumer will benefit from the protection afforded by this Directive.~~

2. The burden of proof of compliance with the information requirements set out in this Chapter shall be incumbent on the trader.

Article 10

Formal pre-contractual requirements for off-premises contracts

1. ~~With respect to off-premises contracts, In good time before the consumer is bound by any off-premises contract or offer, the trader shall give to the consumer the information provided for in Article 9. shall be given in the order form~~ **It shall be provided on a durable medium** in plain and intelligible language and be legible. ~~The order form shall~~ **The information shall** include the standard withdrawal form ~~set out in accordance with Annex I(B).~~
2. ~~An off-premises contract shall only be valid if the consumer signs an order form and in cases where the order form is not on paper, receives a copy of the order form on another durable medium. The consumer shall acknowledge reception of the information provided to him by the trader in accordance with paragraph 1.~~²³
- 2a. ~~Signing of a copy of the contract shall be considered as fulfilment of the obligations provided for in paragraphs 1 and 2.~~
- 2b. Where a consumer wishes the provision of services to begin during the withdrawal period provided for in Article 12(1a), the trader ~~may~~ **shall** require that the consumer makes such a request on a durable medium, **while informing**. ~~If the trader accepts the request made by the consumer, he shall notify the consumer on a durable medium before the performance begins that the consumer~~ **would** ~~will be liable, in the event of exercising the right of withdrawal, be liable to pay the trader reasonable costs for according to Article 17(4):~~
 - ~~—— services provided until the time the consumer has notified the trader of the exercise of the right of withdrawal; and~~
 - ~~—— any diminished value of any goods supplied in accordance with Article 17(2).~~

²³ The issue is now regulated in Article 9(2).

3. Member States shall not impose any formal **pre-contractual** requirements other than those provided for in paragraphs 1 and ~~2~~**a 2b**.

Article 11

*Formal **pre-contractual** requirements for distance contracts*

1. With respect to distance contracts, **the trader shall give or make available to the consumer** the information provided for in Article 9(a) ~~shall be given or made available to the consumer prior to the conclusion of the contract, in plain and intelligible language and be legible, in~~ **good time before the consumer is bound by any distance contract or offer** in a way appropriate to the means of distance communication used. **Insofar as this information is provided on a durable medium it shall be legible.**
- [1a. With respect to 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 explicit confirmation of the information provided for in Article 5(1)(c).]**
2. 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 a phone call**, and the commercial purpose of the call at the beginning of the conversation with the consumer.
3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the ~~product~~ **goods or services** and the total price referred to in Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in ~~Articles 5 and 7~~ **Chapter II** shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

4. The consumer shall receive ~~confirmation~~ of all the information referred to in Article 9(a) to (f), on a durable medium, **including the standard withdrawal form in accordance with Annex I(B)**, in reasonable time after the conclusion of ~~any~~ **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 any distance contract on a durable medium.

4b. Where a consumer wishes the provision of services to begin during the withdrawal period provided for in Article 12(1a), the trader shall require that the consumer makes such a request on a durable medium, while informing the consumer on a durable medium that the consumer would, in the event of exercising the right of withdrawal, be liable to pay the trader reasonable costs according to Article 17(4).

5. Member States shall not impose any formal **pre-contractual** requirements other than those provided for in paragraphs 1 to **4b**.

Article 12

Length ~~and starting point~~ of the withdrawal period

1. The consumer shall have ~~a period of fourteen days~~ **the right to** withdraw from a distance or off-premises contract, without giving any reason.
- 1a. Unless provided otherwise, the withdrawal period shall expire after fourteen days from the day of the conclusion of the contract.**

2. In the case of ~~an off-premises contract~~ **supply sale of goods, and contracts having as its object both goods and services**, the withdrawal period shall ~~begin from the day when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium~~ **not expire before fourteen days from the day when the consumer has taken of delivery.**

~~In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.~~

~~In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.~~

If Where the consumer orders more than one piece of goods from the same trader and the goods are delivered separately, the withdrawal period shall expire after fourteen days from the time when the consumer has taken delivery of each individual goods.

Where ~~the a goods are~~ is delivered in different lots or pieces, the withdrawal period shall expire after fourteen days from the time when the consumer has taken delivery of the last lot or piece. In case of subscriptions the withdrawal period shall expire after fourteen days from the time when the consumer has taken delivery of the first piece.

3. ~~The deadline referred to in paragraph 1 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that deadline.~~
4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.

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 Articles 9(b), 10(1) and 11(4), the withdrawal period shall expire after three months ~~after the trader has fully performed his other contractual obligations~~ **and fourteen days from the day referred to in Article 12.**
2. If the trader has provided the consumer with the information on the right of withdrawal within three months from the day referred to in Article 12, the withdrawal period shall expire ~~after fourteen days from the day~~ **after** the day the consumer receives the information.

Article 14

Exercise of the right of withdrawal

1. The consumer shall inform ~~notify~~ the trader of his decision to withdraw on a durable medium ~~either in a statement addressed to the trader drafted in his own words or using~~ **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 Article 12 and 13 is met if the ~~notification~~ communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that deadline.**

2. ~~For distance contracts concluded on the Internet,~~ 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.

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 ~~any~~ **all** payments received from the consumer ~~within~~ **without any undue delay and no later than** thirty days from the day on which he receives the ~~notification~~ **communication** of withdrawal.
- 2. For sales contracts **for the sale of goods**, the trader may withhold the reimbursement until he has received ~~or collected~~ the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest, **unless the trader has offered to collect the goods himself.**

Article 17

Obligations of the consumer in case of withdrawal

1. ~~For sales contracts for which the material possession of~~ **If the goods has have been transferred to the consumer or at his request, to a third party delivered** before the expiration of the withdrawal period, 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, ~~within~~ **without any undue delay and no later than** fourteen days from the day on which he ~~communicates~~ **notifies informs the trader of** his withdrawal ~~to the trader~~, 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 end of that deadline.**

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

In case of off-premises contracts where the good has been delivered to the consumer's home at the time of the conclusion of the contract, the trader shall compensate the consumer for his costs for returning the goods.

2. 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(b).
3. For service contracts subject to a right of withdrawal, 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 Article 9(b), ~~9(ba)~~ 10(2b), 11(4b) or where the consumer has not requested ~~given his express consent to the performance of the service to begin during the withdrawal period in accordance with Article 10(2b) and 11(4b).~~**
4. Where a consumer exercises the right of withdrawal after having made a request according to Article 10(2b) or Article 11 (4b), the consumer shall be liable to pay to the trader ~~the~~ a reasonable amount costs:
 - (a) which shall not exceed an amount which is in proportion to the extent of the for services provided until the time the consumer has ~~notified~~ informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract; and
 - (b) for any diminished value of any goods supplied in connection with the service performance in accordance with paragraph 2 Article 17(2).
5. ~~The consumer shall not be liable under paragraph 4 where the trader has failed to notify the consumer in accordance with Article 10(2b).~~

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. In respect of distance **and off-premises** contracts, ~~the right of withdrawal shall not apply the~~ **consumer may not withdraw from the contract** as regards the following:
 - (a) ~~services where performance has begun, with the consumer's prior express consent, before the end of the fourteen day period referred to in Article 12;~~
 - (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;
 - (caa) contracts for the supply of foodstuffs and beverages or when sold together with these, other goods intended for current consumption in the household, and which are physically supplied by the trader to the consumer's home, residence or workplace; [Moved from Article 19(2)(a)]**
 - (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;**

- (d) the supply of ~~wine~~ **alcoholic beverages**²⁴, 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 ~~or books~~²⁵ which were unsealed by the consumer;
- (f) the **unit** supply of **a** newspaper, periodicals ~~and or~~ magazines **excluding any form of subscription**;
- (g) ~~gaming and lottery services~~;
- (h) contracts concluded at ~~an~~ **a public** auction;
- (i) **the provision of holiday accommodation, transport, car rental services, ~~or~~ catering or services related to leisure ~~services~~ activities if the contract provides for a specific date or period of performance.**

2. ~~In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:~~

- (a) ~~contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;~~
[Moved to Article 19(1)(ca)]
- (b) ~~contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;~~

²⁴ To be further evaluated.

²⁵ There are differing views on the question if the exception for sealed books should be kept or deleted.

- (c) ~~contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.~~

2a. ~~In respect of distance contracts, the consumer may not withdraw from the contract as regards services where performance has begun with the consumer's prior express consent before the end of the fourteen day withdrawal period referred to in Article 12 under the condition that the consumer has been informed in accordance with Article 9(ba).~~

3. ~~The parties may agree not to apply paragraphs 1 and 2.~~

Article 20

Excluded distance and off-premises contracts

1. ~~Articles 8 to 19 shall not apply to distance and off-premises contracts:~~

(a) ~~for the sale of immovable property or relating to other immovable property rights, except for rental and works relating to immovable property;~~

(b) ~~concluded by means of automatic vending machines or automated commercial premises;~~

(c) ~~concluded with telecommunications operators through public payphones for their use;~~

(d) ~~for the supply of foodstuffs or beverages by a trader on frequent and regular rounds in the neighbourhood of his business premises.~~

2. ~~Articles 8 to 19 shall not apply to off-premises contracts relating to:~~
- ~~(a) insurance,~~
 - ~~(b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC²⁶ and~~
 - ~~(c) credit which falls within the scope of Directive 2008/48/EC.~~
3. ~~Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.~~

Chapter IV

Other consumer rights specific to sales ~~contracts~~ of goods

Article 21

Scope

1. This Chapter shall apply to sales contracts **under which the trader transfers or undertakes to transfer the ownership of goods to the consumer against consideration.** Without prejudice to Article 24(5), where the contract ~~is a mixed-purpose contract having~~ **has** as its object both goods and services, this Chapter shall only apply to the goods, ~~unless the service performance is necessary to fulfil the contract for sale of goods, in which case this Chapter shall apply to the entire contract.~~
2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.

²⁶ OJ L 271, 09.10.2002, p. 16.

3. ~~This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.~~
4. ~~Member States may decide not to apply~~ This Chapter **shall not apply** to the sale of second-hand goods at public auctions.

Article 22

Delivery

1. Unless the parties have agreed otherwise, the trader shall deliver the goods ~~by transferring the material physical possession of the goods to the consumer or to a third party, other than the carrier and indicated by the consumer and acting on his behalf, immediately when the contract is concluded on business premises and otherwise~~ within a maximum of **reasonable time which in any event cannot shall not be more than** thirty days from the day of the conclusion of the contract.
- 1a. ~~Where the trader has failed to fulfil his obligations to deliver, the consumer may, in accordance with the applicable national law, allow an additional time for delivery, enforce the performance of the contract, withhold payment, terminate the contract and ask for damages.~~
2. ~~In any event, Where~~ the trader has failed to fulfil his obligation to deliver **in time** in accordance with **paragraph 1**, the consumer shall be entitled to **terminate the contract and request a refund. The trader shall then refund any sums paid or other considerations provided by the consumer** within ~~no later than~~ seven days from the date of delivery provided for in paragraph 1 ~~when he was informed about the consumer's decision to terminate the contract.~~ *[Moved to new paragraph 5]*
3. ~~Where:~~
 - (a) ~~the contract concerns goods to be manufactured, produced or especially ordered for the consumer and the trader would have difficulties reselling the goods, or~~
 - (b) ~~the goods have been delivered or delivery is imminent,~~

~~the consumer may only terminate the contract in accordance with paragraph 2 if the delay was of significant importance to him and the trader was, or should have been, aware of this.~~

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.

4. Where the recourse to national remedies under paragraph 3 is unsuccessful and the consumer in consequence decides to terminate the contract, paragraph 5 applies.
5. The trader shall, in accordance with paragraphs 2 and 4, refund any sums paid or other considerations provided by the consumer no later than seven days from the date when he was informed about the consumer's decision to terminate the contract.

Article 23

Passing of risk

1. The risk of loss of or damage to the goods shall pass to the consumer ~~when~~ **where** he or a third party, ~~other than the carrier and indicated by the consumer~~ **him and acting on his behalf**, has taken over the goods ~~acquired the material physical possession of the goods, or where the consumer has obtained control over the goods in a way comparable with physical possession.~~
2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if ~~Where~~ the consumer or a third party, ~~other than the carrier and indicated by the consumer~~ **and acting on his behalf**, has failed to perform the obligation to take over the goods and the non-performance is not excused due to an objectively justifiable impediment, the risk shall pass to the consumer from the time when the goods should have been taken over ~~take reasonable steps to acquire the material physical possession of the goods or to obtain control over the goods in a comparable way, having been given reasonable opportunity to acquire such a possession or control, the risk referred to in paragraph 1 shall pass to the consumer at the time he failed to take such steps.~~

Article 24

Conformity with the contract

1. The trader shall deliver the goods in conformity with the sales contract, ~~particularly regarding quality, quantity and description. The goods shall be contained or packaged in the manner required by the contract.~~
2. Delivered goods shall be ~~presumed~~ **not considered** to be in conformity with the contract if ~~unless~~ they satisfy the following conditions:
 - (a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;
 - (b) they are fit for any particular purpose for which the consumer requires them and which he made known to the trader ~~at the time of~~ **before** the conclusion of the contract and which the trader has accepted;
 - (ba) they are supplied with user instructions, where this is necessary for the proper use of the goods;**
 - (bb) they are contained or packaged in a manner adequate to preserve and protect the goods;**
 - (c) they are fit for the purposes for which goods of the same type are normally used; ~~or~~ **and**
 - (d) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made ~~about them~~ by the trader, the producer or his representative, particularly in ~~advertising a~~ **commercial communication** or on labelling.
3. There shall be no lack of conformity for the purposes of this Article ~~if~~ **where**, at the time the contract was concluded, the consumer was ~~aware~~, or should reasonably have been, aware of the lack of conformity, or ~~if~~ **where** the lack of conformity has its origin in materials supplied by the consumer **where he has been informed by the trader of the unsuitability of the materials.**

4. The trader shall not be bound by ~~a~~ public statements, as referred to in paragraph 2(d) ~~where~~ ~~if~~ he shows that one of the following situations existed:
 - (a) he was not, and could not reasonably have been, aware of the statement in question;
 - (b) by the time of conclusion of the contract the statement had been corrected **in a manner which gave the consumer an opportunity to become aware of it**;
 - (c) the decision to buy the goods could not have been influenced by the statement.

5. Any lack of conformity resulting from the incorrect installation, ~~assembly~~ **or adjustment** of the goods **made by the trader or under his responsibility** shall be considered as a lack of conformity of the goods ~~where the installation forms part of the sales contract and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods,~~ **Where the goods are** intended to be installed, **assembled or adjusted** by the consumer, ~~are installed by the consumer and the incorrect installation is~~ **any lack of conformity** due to a shortcoming in the ~~installation~~ instructions ~~should~~ **shall** be considered **as to be a lack of conformity of the goods.**

Article 25

~~Legal rights~~—Liability for lack of conformity

The trader shall be liable to the consumer for any lack of conformity which exists at the time the risk passes to the consumer.

Article 26

Remedies for lack of conformity

1. ~~As~~ **Under the conditions** provided for in paragraphs 2 to 5, where the goods do not conform to the contract, the consumer ~~shall be~~ ~~is~~ entitled to **have**:
 - (a) ~~have~~ the lack of conformity remedied by repair; ~~or~~
 - (aa) the lack of conformity remedied by replacement**;
 - (b) ~~have~~ the price reduced; **or**
 - (c) ~~have~~ the contract ~~rescinded~~ **terminated**.

2. The trader shall remedy the lack of conformity by either repair or replacement according to ~~his~~ **the choice of the consumer**. During a period of fifteen days as from the day of delivery passing of risk the consumer may ~~also~~ **instead** terminate the contract, if the lack of conformity is not minor. ~~unless the trader, after the contract has been terminated, would have difficulties reselling the goods and:~~
- ~~(a) the goods are perishable;~~
 - ~~(b) the goods are manufactured, produced or especially ordered for the consumer; or~~
 - ~~(c) the consumer should have discovered the lack of conformity before carrying out an act inconsistent with returning the goods.~~
3. Where ~~the remedy chosen by the consumer is repair or replacement and~~ the trader has proved that remedying the lack of conformity **according to the choice of the consumer** ~~by repair or replacement~~ is unlawful, impossible or would cause the trader a disproportionate effort, the consumer ~~shall be offered~~ **entitled to use the other of those two remedies**. **In the event that both of those remedies are unlawful, impossible or would cause the trader a disproportionate effort, the consumer** may choose to have the price reduced or, **if the lack of conformity is not minor**, the contract ~~rescinded~~ **terminated**.
- 3a.** A trader's effort is disproportionate ~~if~~ **where** it imposes costs on him which, in comparison with the ~~price reduction or the rescission~~ **termination** of the contract **alternative remedy**, are excessive, taking into account the value of the goods ~~if~~ **where** there was no lack of conformity and the significance of the lack of conformity.
- ~~The consumer may only rescind the contract if the lack of conformity is not minor.~~

4. The consumer may resort to any remedy available under paragraph 1, where one of the following situations exists:
- (a) the trader has implicitly or explicitly refused to remedy the lack of conformity;
 - (b) the trader has failed **or, according to the objective circumstances, will is likely to fail** to remedy the lack of conformity within a reasonable time;
 - (c) the trader has tried to remedy the lack of conformity, causing significant inconvenience to the consumer, **or if the trader, according to the objective circumstances, will is not likely to be able to remedy the lack of conformity without causing significant inconvenience to the consumer**;
 - (d) **after repair, the same a defect has reappeared reappears more than once** within a short period of time.

~~Without prejudice to paragraph 2, The consumer may only terminate the contract under this paragraph~~ where the lack of conformity is not minor.

5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ~~or~~ **and** the purpose for which the consumer acquired the goods as provided for by Article 24(2)(b).

Article 27

Costs and damages

1. The consumer shall be entitled to have the lack of conformity remedied free of any costs. ~~The consumer shall compensate the trader for the use of the defective goods only in cases where the contract has been terminated and the consumer has benefited from the use of the good.~~
2. Without prejudice to the provisions of this Chapter, the consumer ~~may~~ **shall be able to** claim damages **provided for by national law** for any loss not remedied in accordance with Article 26.

3. The consumer may also withhold payment, in accordance with national law, in order to secure his claims towards the trader due to the lack of conformity.

Article 28

Time limits and burden of proof

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.
- 1a. ~~Where a good, in accordance with Article 24(2)(b) and (c), is not fit for a particular purpose for which the consumer requires it or for~~ **the lack of conformity is objectively difficult for the consumer to detect and relates to** the purposes for which goods of the same type are normally used **according to Article 24(2)(c)**, the trader shall be held liable under Article 25 where the lack of conformity becomes apparent within ten years as from the time the risk passed to the consumer.
- 1b. **In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year as from the time the risk passed to the consumer. [Partially former paragraph 3 of Article 28]**
2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has **taken over** ~~acquired the material physical possession of~~ the replaced goods.

- 2a. When the trader has remedied the lack of conformity by repair, the periods provided in paragraph 1, 1a and 1b shall be extended by the period of time during which the goods were not in the physical possession of the consumer due to the repair. However, where the consumer has failed to take reasonable steps to acquire the physical possession of the goods after the repair the time thereafter shall not be counted.
- 2b. Where the trader has repaired the good according to Article 26 by replacement of parts, the trader shall be held liable for the lack of conformity of the spare parts during a period of the remaining duration of his liability of the main good, and always at least six months after the repair even if the remaining duration of his liability of the main good is shorter than six months.
3. ~~In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.~~
4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within **a reasonable time** ~~two months from the date on which, having regard to all circumstances of the case after he has detected the lack of conformity.~~
5. Unless proved otherwise, any lack of conformity which becomes apparent within ~~six~~ **twelve** months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods ~~and~~ **or** the nature of the lack of conformity.
6. The trader shall not be entitled to rely on the provisions of paragraphs 1 to ~~5~~ **4** where the lack of conformity relates to facts of which the trader knew or could reasonably be expected to have known and which he did not disclose to the consumer.

Article 29
Commercial guarantees

1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. **The trader shall make the guarantee statement available on a durable medium.** In the absence of the guarantee statement, the commercial guarantee shall be binding under the conditions laid down in the ~~advertising~~ **relevant commercial communication** on the commercial guarantee **available at the time of the conclusion of the contract.**

In case of a difference between the guarantee statement and the commercial communication, the one more favourable for the consumer shall prevail.

2. The guarantee statement shall be **clear and comprehensible and** drafted in plain intelligible language and be legible. It shall include the following:
 - (a) legal rights of the consumer, as provided for in Articles 26 and 28, and a clear statement that those rights are not affected by the commercial guarantee,
 - (b) set the contents of the commercial guarantee and the conditions for making claims, ~~notably~~ **especially** the duration, territorial scope and the name and address of the guarantor **and, if different from the guarantor, the name and address of a third person where the commercial guarantee shall be claimed,**
 - [**(c) without prejudice to Articles 32 and 35 and Annex III(1)(j), set out, where applicable, that the commercial guarantee cannot be transferred to a subsequent buyer.**]**
3. ~~If the consumer so requests, The trader shall make the guarantee statement available in a durable medium.~~ *Moved to I.*
4. Non-compliance with paragraph 2 ~~or 3~~ shall not affect the validity of the guarantee.

Chapter V

Consumer rights concerning contract terms

Article 30

Scope

1. This Chapter shall apply to contract terms ~~drafted~~ **established** in advance by the trader or a third party, which the consumer agreed to without having ~~the possibility of influencing~~ **been able to influence** their content, in particular where such contract terms are part of a pre-formulated standard contract.
 - 1a. **Where the trader claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him in that regard.**
2. The fact that the consumer ~~had the possibility of influencing~~ **was able to influence** the content of certain aspects of a contract term or one specific term, shall not exclude the application of this Chapter to other contract terms which form part of the contract.
3. This Chapter shall not apply to contract terms reflecting mandatory statutory or regulatory provisions, which comply with Community law and the provisions or principles of international conventions to which the Community or the Member States are party.

Article 31

Transparency requirements of contract terms

1. **All contract terms shall be expressed in a clear and comprehensible manner. If a contract term is in writing, it must always be drafted** in plain, intelligible language and be legible.
2. Contract terms shall be made available to the consumer in a **time and** manner which gives him a real opportunity of becoming acquainted with them ~~in good time~~ before the conclusion of the contract, with due regard to the means of communication used.

3. The trader shall seek the express consent of the consumer to any 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, ~~for example~~ 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.
4. Member States shall refrain from imposing any presentational requirements as to the way the contract terms are expressed or made available to the consumer, ~~unless otherwise provided in national legislation implementing Community legislation or national legislation providing except for specific presentational requirements for disabled persons in relation to persons with disabilities.~~

Article 32

General principles

1. Where a contract term is not included in Annex II or III, Member States shall ensure that it is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
 - 1a. **When assessing the fairness of a contract term, the competent court or national authority shall take into account the manner in which the contract term has been ~~was drafted and~~ communicated to the a consumer by the trader and, where applicable, the manner in which it was drafted, in accordance with Article 31(1) and (2).**
2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account:
 - ~~the nature of the products~~ **subject-matter** object of the contract, ~~for which the contract was concluded and by referring, at the time of the conclusion of the contract, to;~~

- all the circumstances attending the conclusion **of the contract at the time of such conclusion**; ~~and to~~
- all the other terms of the contract or of another contract on which the former is dependent. ~~When assessing the fairness of a contract term, the competent court or national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31.~~

3. Paragraphs 1 and 2 shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that, **with regard to these contract terms**, the trader fully complies with Article 31(1) and (2).

Article 33

Burden of proof

~~Where the trader claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him.~~(Moved to 30(1a))

Article 34

Terms considered unfair in all circumstances

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~

Article 35

Terms presumed to be unfair

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are ~~considered~~ **presumed to be** unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~

Article 36

Interpretation of terms

1. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail.
2. This Article shall not apply in the context of the procedures laid down in Article 38(2).

Article 37

Effects of unfair contract terms

Contract terms which are unfair **according to this Directive** shall not be binding on the consumer **in accordance with national law**. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Article 38

Enforcement in relation to unfair contract terms

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the ~~continued~~ use of unfair terms in contracts concluded with consumers by traders.

2. In particular, persons or organisations, having a legitimate interest under national law in protecting consumers, may take action before the courts or administrative authorities for a decision as to whether contract terms drawn up for general use are unfair.
3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from ~~continuing to the use of~~ terms which have been found unfair.
4. Member States shall ensure that the legal actions referred to in paragraph 2 and 3 may be directed either separately or jointly depending on national procedural laws against a number of traders from the same economic sector or their associations which use or recommend the use of the same general contract terms or similar terms.

Article 39

Review of the terms in Annexes II and III

1. ~~Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.~~
2. ~~In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2).~~

Chapter VI

General provisions

Article 40

~~The Committee~~

1. ~~The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as "the Committee").~~
2. ~~Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC²⁷ shall apply, having regard to the provisions of Article 8 thereof.~~

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.

²⁷ ~~OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).~~

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 42a

Remedies for breach of information obligations

Without prejudice to Articles 5(1a), ~~6(1a)~~ 6(2), 13 and 42, the Member States shall provide in their national laws for effective contract law remedies for any breach of Articles 5 and 9.

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 product 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 [~~eighteen months~~ **two years** after its entry into force] 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 ~~and a correlation table between those provisions and this Directive~~.

They shall apply those provisions from [~~two years~~ **thirty months** after its entry into force].

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.

Chapter VII

Final provisions

Article 47

Repeals

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed.

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 developments in the area. 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

1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.

2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending **a notification either in** the withdrawal form **set out in Part B or as an explicit statement** on a durable medium to the trader referred to in paragraph 1:
 - (a) for off-premises contracts, within a period of fourteen days following his signature of the order form;
 - (b) for distance sales contracts, within a period of fourteen days following the ~~material~~ **physical** possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;
 - (c) for distance service contracts:
 - within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen day period;
 - within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.

[Subject to the final wording of the Articles]

3. For all sales contracts, a statement informing the consumer about the time-limits and modalities to send back the goods to the trader, **including the information on who bears the costs for sending back the goods**, and the conditions for the reimbursement in accordance with Articles 16 and 17(2).
4. ~~For distance contracts concluded on the Internet~~ **If the trader so allows**, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.
5. ~~A statement that the consumer can use the withdrawal form set out in Part B.~~

B. Model 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 have the object or effect of the following, shall be unfair in all circumstances:

- (a) excluding or limiting the liability of the trader for death or personal injury caused to the consumer through an act or omission of that trader;

(aa) excluding or limiting the liability of the trader for damage on the property of the consumer caused deliberately or as a result of gross negligence through an act or omission by the trader;

- b) limiting the trader's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular condition which depends exclusively on the trader;
- (c) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions;
- (d) restricting the evidence available to the consumer or imposing on him a burden of proof which, according to the applicable law, should lie with the trader;
- (e) giving the trader the right to determine whether the goods or services supplied are in conformity with the contract or giving the trader the exclusive right to interpret any term of the contract.

CONTRACT TERMS WHICH ARE PRESUMED TO BE UNFAIR

1. Contract terms, which have the object or effect of the following, are presumed to be unfair:
 - (a) excluding or limiting the legal rights of the consumer vis-à-vis the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer of offsetting a debt owed to the trader against a claim which the consumer may have against him;
 - (aa) irrevocably binding the consumer to a contract with immediate effect, whereas the time for the traders contractual commitment depends exclusively on the trader;**
 - (ab) requiring that the consumer also must enter into further contracts with the same trader in the future;**
 - (b) allowing the trader to retain a payment by the consumer where the latter fails to conclude or perform the contract, without giving the consumer the right to be compensated of the same amount if the trader fails to conclude or perform the contract;
 - (c) requiring any consumer who fails to fulfil his obligation to pay damages which significantly exceed the harm suffered by the trader;
 - (d) allowing the trader to terminate the contract at will where the same right is not granted to the consumer;
 - (e) enabling the trader to terminate an open-ended contract without reasonable notice except where the consumer has committed a serious breach of contract;
 - (ea) allowing a shorter period of notice for the trader than the consumer when terminating an open-ended contract;**
 - (f) automatically renewing a fixed-term contract where the consumer does not indicate otherwise and has to give a long notice to terminate the contract at the end of each renewal period;

- (g) allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract;

(ga) enabling the trader to decide the price of goods or services to be determined at the time of the delivery according to factors depending on the traders will alone;

- (h) obliging the consumer to fulfil all his obligations where the trader has failed to fulfil all his obligations;
- (i) giving the trader the possibility of transferring his obligations under the contract, without the consumer's agreement;
- (j) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the trader;
- (k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service;

(ka) allowing the time limit for supplying a product or performing a service to be decided or amended unilaterally by the trader;

- (l) unilaterally amending contract terms communicated to the consumer in a durable medium through on-line contract terms which have not been agreed by the consumer.

2. Point 1(e) shall not apply to terms by which a supplier of financial service reserves the right to terminate unilaterally an open-ended contract without notice, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

3. Point 1(g) shall not apply to:

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
- (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
- (c) price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

4. Point 1(k) shall not apply to:

- (a) terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;
- (b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
- (c) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
- (d) terms under which the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.