

Consumer rights

2008/0196(COD) - 23/06/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 615 votes to 16 with 21 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on consumer rights. Parliament adopted its position on first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise agreement between Parliament and Council. The proposal is amended as follows:

Degree of harmonisation: the regulatory aspects to be harmonised should only concern contracts concluded between traders and consumers. Therefore, this Directive should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements.

As far as business- to- consumer contracts are concerned, the Directive establishes rules on information to be provided for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts. The Directive also regulates the right of withdrawal for distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of consumer contracts.

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

Scope: the Directive shall apply to contracts concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity and district heating by public providers to the extent that these commodities are provided on a contractual basis. It shall not apply to contracts(i) for social services ; (ii) healthcare (iii) gambling; (iv) financial services; (v) the creation, acquisition or transfer of rights of or in immovable property;(vi) for the construction of new buildings; (vii) package holidays; (viii) timeshare, long-term holiday product, resale and exchange contracts; (ix) supply of foodstuffs, beverages or other goods intended for current consumption in the household; (x) passenger transport services; (xi) concluded by means of automatic vending machines or automated commercial premises; (xii) 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.

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

Distance and off-premises contracts: the amended text states that before the consumer is bound by any distance or off-premises contract or any corresponding offer, the trader shall provide the consumer with information in a clear and comprehensible manner. The information to be provided includes the following:

- the identity, the address, the telephone number of the trader as well as his fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently;
- the total price inclusive of taxes;

- the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- the arrangements for payment, delivery, performance,;
- the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right;
- where applicable, that the consumer will have to bear the cost of the return of the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- 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;
- the functionality, including applicable technical protection measures, of digital content, where applicable;
- where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

With regard to the right of withdrawal, the information may be provided by means of the Model instructions on withdrawal set out in Annex I(A). As regards compliance with the information requirements, the burden of proof shall be upon the trader.

Off-premises contracts: the information shall be legible and in plain, intelligible language. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on a different durable medium, including, where applicable, the confirmation of the consumer's consent and acknowledgement.

Distance contracts: the information provided for shall be given to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language and, insofar as it is provided on a durable medium, it shall be legible. If a distance contract to be concluded by electronic means places the consumer under an obligation to make a payment, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in the text.

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

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

Right of withdrawal: subject to exceptions referred to in the text, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in the text. . The withdrawal period shall expire after 14 days from, the day of the conclusion of the contract in the case of service contracts and the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods in the case of sales contracts.

If the trader has not provided the consumer with the information on the right of withdrawal, the withdrawal period shall expire 12 months from the end of the initial withdrawal period. If the trader has

provided the consumer with the information provided for, the withdrawal period shall expire 14 days upon which the day where the consumer receives that information.

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

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

Exceptions from the right of withdrawal: these include: (i) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery; (ii) contracts for which the consumer has specifically requested the trader to visit him for the purpose of carrying out urgent repairs or maintenance; (iii) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications; (iv) contracts concluded at a public auction; (v) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance; (vi) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he hereby loses his right of withdrawal.

Delivery: unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay after, but not later than 30 days from the conclusion of the contract. Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon, the consumer shall call upon him to make the delivery within a period appropriate to the circumstances. If the trader fails to deliver the goods within the appropriate time, the consumer shall be entitled to terminate the contract.

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

Inertia selling: the consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of goods, water, gas, and electricity, district heating or digital content or unsolicited provision of a service, prohibited by Directive 2005/29 /EC. In such cases, the absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Reporting by the Commission and review: five years after entry into force of the Directive, the Commission shall submit a report on the application of the Directive to the European Parliament and the Council. That report shall include in particular an evaluation of provisions regarding digital content including the right of withdrawal. The report shall be accompanied, where necessary, by legislative proposals to adapt the Directive to developments in the field of consumer rights.