

Protection of consumers: distance contracts

1992/0411(COD) - 29/06/1995 - Council position

The Council's common position incorporated, in full or in part, the European Parliament's amendments included in the Commission's amended proposal. The main amendments introduced by the Council related to the following points: - withdrawal of the approach concerning "contract solicitation", which proved to be inappropriate with respect to distance contracts; - use throughout the directive of the terms "distance contracts" instead of "contracts negotiated at a distance"; - removal of the definition of an "order"; - limitation of the definition of an "operator" to only those persons making one or more means of distance communication available to suppliers, since it was their practices that needed to be regulated; - withdrawal and referral to national legislation of the performance of a split contract; - with regard to exemptions, exclusion from the scope of the directive of contracts relating to financial services, contracts concluded at an auction and contracts concluded through the use of public payphones; - distinction between prior information and written confirmation of information; - in the case of communication by telephone (with the exception of automatic calling machines) and electronic mail, the principle of prior consent did not apply; - strengthened provisions linked to the execution of the order (execution no later than 30 days following the date on which the order was forwarded); - with regard to payments, the text did not prohibit prior payments but it stipulated that the supplier should refund the amount paid by the consumer in the case of withdrawal or non-execution of the contract. The text also included a more general provision concerning any form of fraudulent use of payment cards, leaving open the means for recrediting the sums due; - clarification of the provisions concerning the right of withdrawal and the exclusion of contracts relating to: services, if performance had begun with the consumer's agreement; immovable property; audio or video recordings, computer software; newspapers, periodicals and magazines; gaming and lottery services; - relaxation of the provisions concerning judicial actions on the part of consumer organisations: (a) legal action at national level was left to the discretion of the Member States; (b) the provision concerning cross-border legal action was removed; - finally, reference in the minimal clause to the ban on the marketing of medicinal products, without limiting it to only those medicinal products delivered on prescription.