Protection of consumers: distance contracts

1992/0411(COD) - 07/10/1993 - Modified legislative proposal

In its modified proposal, the Commission reflected a number of amendments by Parliament. The principal changes to the initial proposal relate to the following points: - The right of consumers to undertake cross-border operations is more clearly apparent in the recitals. - In response to the concern expressed by Parliament regarding the prohibition of distance selling of medicinal products, a recital has been introduced recalling that the Member States have various means for intervening both under this Directive and under Directives Nos 89/552/EEC (televised advertising) and 92/28/EEC (advertising of medicinal products for human use). - A number of definitions have been clarified: the contracts in question are those concluded in the context of a system for selling or rendering services. As far as the supplier is concerned, the text adopts the definition used by the Directive on unfair terms (No 93/13/EEC). The question of which forms of advertising constitute solicitation is made clear. - Exemptions: goods such as made-to-measure articles and reservation services cannot be excluded from the scope of the Directive. However, goods of this type cannot be subject to a cooling-off period enabling the consumer to change his mind (exemption from the right of cancellation). - In the case of certain telecommunications technologies (fax, electronic mail, telephone and automatic calling machines), the prior consent of the consumer is required. - The obligation to inform the consumer of the content of the solicitation is reinforced by a reference to the right of cancellation and an indication of the VAT costs. The obligation to inform is also broadened in cases of televised solicitation. - No payment may be required of the consumer before the goods are delivered or the service rendered. - In the event that the supplier cannot supply the goods or service ordered but supplies equivalent goods or an equivalent service of the same quality and at the same price, this does not constitute unsolicited supplying. - Provision has been made for mutual recognition of legal proceedings instituted by professional or consumer organisations. This mutual recognition is confined to those States which accept this type of action. Furthermore, the Directive makes it possible for the courts to order that the dissemination of solicitations be discontinued. - If the consumer discovers a defect in goods after the end of the cooling-off period, he retains his rights to compensation. - Finally, it is desirable for the consumer to be informed of the existence and content of the codes of practice intended to supplement the Directive.