

Distance marketing of consumer financial services

1998/0245(COD) - 23/07/1999 - Modified legislative proposal

The Commission's amended proposal accepts the amendments made by the European Parliament bearing in mind certain number of amendments as a consequence of the full harmonisation level of the proposal as well as of the necessity to ensure a clear alignment with the existing provisions. The main amendments introduced by the Commission concern the following points : - Definitions: the definition of "distance contract" has been amended, in order to cover contracts for which the supplier exclusively employs means of a distance communication up to and including the moment at which the contract is concluded. A new definition has been introduced, namely "real estate credit" in order to respond to the necessity expressed by the European Parliament to envisage particular provisions for this type of credit. - Prior information: the Parliament's amendment basically aims at providing consumers with the information prior to conclusion of the contract, has been concluded. However, the wording has been changed, the idea being on the one hand to draw up a list of information items which have added value in the context of distance contracts, and on the other hand to bring this list into line with existing rules in the sectoral directives (non-life insurance, life insurance, OCITS, prospectus, and investment services). - Communication of the contractual terms and conditions and of the prior information: the amended proposal provides that the contractual terms and conditions and a summary thereof, including the prior information, must be communicated in writing or in a durable medium before conclusion of the contract. - Right of withdrawal: the amended proposal establishes a general right of withdrawal. The period during which the consumer may withdraw is from 14 to 30 days and may be determined by the Member States depending on the degree of consumer protection required as a function of the financial services concerned. However, in order not to hamper the free movement of financial services, when the supplier respects the withdrawal period provided for by the Member State in which he is established, he is not required to respect a different withdrawal period for contracts involving large sums of money or for long-term contracts. There are exceptions and they partially take into account the amendments of the Parliament and concern: - financial services in respect of which exercise of the right of withdrawal might lead to a risk of speculation; - the non-life insurances for a period of less than two months and; - the contracts whose performance has been entirely completed before the consumer exercises the right of withdrawal. A general exclusion of all forms of credit would not be desirable. Nevertheless, in order to address the concerns expressed both by the Parliament and the Council, real estate credit is the subject of dedicated provisions. Thus, the Member States may provide that consumers can no longer rely on the right of withdrawal when, with their consent, the funds borrowed have been transferred to the seller of the real estate or to the latter's representatives; once a notarial act concerning the real estate credit has been validly and regularly recorded; and as is the case of real estate credit based on mortgage bonds. - Performance of the contract and payment of the service provided prior to withdrawal: the provision integrates a new paragraph into the text stipulating that, in order to initiate performance of the contract before the expiry of the withdrawal period, the consumer's consent must first be elicited. The provision aimed at preventing the price to be paid constituting a penalty has been included. Besides, the provision concerning prior information as to the price to be paid now features in the list of prior information. What has equally been included is the principle aiming to put a ceiling on the amounts to be reimbursed to the supplier in the event of withdrawal (the time limit is extended to 30 days). - Unavailability of the service: the amendment is aimed at laying down a maximum time limit for reimbursement in the event of unavailability of the service, this amendment has been included, but the time limit has been extended to 30 days (instead of 14 days as proposed by Parliament). - Payment by card: conforming to the wishes of the Parliament, the Member States shall take appropriate measures to ensure that consumers can request the cancellation of a payment in the case of fraudulent use of their payment card in transactions falling within this Directive; and that the amounts paid are recredited or that the consumer is reimbursed. - Unsolicited communications: with an eye to consistency with Directives 97/7/EC and 97/66/EC, prior consent may only be required in the case of automatic calling devices and fax machines. In the case of other means of communication the consumer may be contacted unless he has put it on record that he does not want to be contacted. The part of the

amendment concerning the particulars to be provided in the case of telephone communications has been included.