Protection of consumers: distance contracts

1992/0411(COD) - 20/05/1997 - Final act

OBJECTIVE: to improve the protection of consumers in respect of abuses in relation to distance contracts. COMMUNITY MEASURE: European Parliament and Council Directive 97/7/EC on the protection of consumers in respect of distance contracts. SUBSTANCE: the directive covers distance contracts for all goods and services except for contracts: - relating to financial services; - concluded by means of automatic vending machines or automated commercial premises; - concluded with telecommunications operators through the use of public payphones; - concluded for the construction and sale of immovable property; - concluded at an auction. The essential elements of the directive are as follows: a) prior information to the consumer: prior to the conclusion of any distance contract the consumer must be provided with the following information: - the identity of the supplier and, in the case of contracts requiring payment in advance, his address; - the main characteristics of the goods or services; - the price of the goods or services including all taxes; - delivery costs; - the arrangements for payment, delivery or performance; - the existence of a right of withdrawal; - the cost of using the means of distance communication; - the period for which the offer or the price remains valid; - where appropriate, the minimum duration of the contract. This information must be provided in a clear and comprehensible manner. In the case of telephone communication the identity of the supplier and the commercial purpose of the call must be made explicitly clear at the beginning of any conversation. The use by the supplier of distance communications techniques such as automatic calling machines or fax requires the prior consent of the consumer. b) written confirmation of information: the consumer must receive written confirmation or confirmation in another durable medium of the information needed for the smooth operation of the contract. In any event the following must be provided: - information on the conditions and procedures for exercising the right of withdrawal; - the geographical address of the place of business of the supplier to which the consumer may address any complaints; - information on after-sales services and guarantees which exist; - the conditions for cancelling the contract where it is of unspecified duration or a duration exceeding one year. c) right of withdrawal: for any distance contract the consumer shall have a period of seven working days in which to withdraw from the contract without penalty and without giving any reason. In this case the supplier is obliged to reimburse (within 30 days) the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. The consumer may not exercise the right of withdrawal in respect of contracts: - for the provision of services if performance has begun, with the consumer's agreement, before the end of the seven working day period; - for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier; - for the supply of goods clearly personalized which cannot be returned or which are liable to deteriorate rapidly; - for the supply of audio or video recordings or computer software which were unsealed by the consumer; - for the supply of newspapers, periodicals and magazines; - for gaming and lottery services. d) performance: unless the parties have agreed otherwise, the supplier must execute the order within 30 days from the day on which the order was given. Where there is failure to execute the contract because the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund within 30 days. The prior agreement of the consumer may be necessary before the supply of a substitute product. e) payment by card: the directive requires the Member States to take measures to ensure that the consumer can request cancellation of a payment where fraudulent use has been made of his payment card and that he will be recredited with the sums paid in the event of fraudulent use. f) inertia selling: Member States must prohibit the supply of goods or services to a consumer without their being ordered by the consumer beforehand where such supply involves a demand for payment. g) judicial or administrative redress: the directive requires Member States to ensure that adequate and effective means exist to ensure compliance with the directive. These means shall include the possibility for certain bodies to take action before the courts or the competent administrative bodies (public bodies, consumer organizations, professional organizations having a legitimate interest in acting). Lastly, the Member States may introduce or maintain more stringent provisions to ensure a higher level of consumer protection (minimal clause). ENTRY INTO FORCE: 04/06/1997 DEADLINE FOR TRANSPOSITION: 04/06/2000