

Basic information	
<b>2008/0196(COD)</b>  COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Consumer rights  Repealing Directive 97/7/EC <a href="#">1992/0411(COD)</a> Amending Directive 1999/44/EC <a href="#">1996/0161(COD)</a> Amended by <a href="#">2013/0246(COD)</a> Amended by <a href="#">2018/0090(COD)</a> Amended by <a href="#">2022/0092(COD)</a> Amended by <a href="#">2022/0147(COD)</a> See also <a href="#">2015/2881(RSP)</a>	
<b>Subject</b>  4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>IMCO</b> Internal Market and Consumer Protection	SCHWAB Andreas (PPE)	14/09/2009
		Shadow rapporteur  GEBHARDT Evelyne (S&D)  ROCHEFORT Robert (ALDE)  TURUNEN Emilie (Verts/ALE)  BIELAN Adam (ECR)  TRIANTAPHYLIDES Kyriacos (GUE/NGL)  SALVINI Matteo (EFD)	
Former committee responsible	Former rapporteur	Appointed	
<b>IMCO</b> Internal Market and Consumer Protection			
Committee for opinion	Rapporteur for opinion	Appointed	
<b>ECON</b> Economic and Monetary Affairs	PIETIKÄINEN Sirpa (PPE)	21/07/2009	
<b>JURI</b> Legal Affairs (Associated committee)	WALLIS Diana (ALDE)	02/09/2009	

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs		
JURI Legal Affairs (Associated committee)		

Council of the European Union	Council configuration	Meetings	Date
	Employment, Social Policy, Health and Consumer Affairs	3019	2010-06-07
	Competitiveness (Internal Market, Industry, Research and Space)	3057	2010-12-10
	Competitiveness (Internal Market, Industry, Research and Space)	2945	2009-05-28
	Competitiveness (Internal Market, Industry, Research and Space)	2982	2009-12-03
	Competitiveness (Internal Market, Industry, Research and Space)	2910	2008-12-01
	Competitiveness (Internal Market, Industry, Research and Space)	3016	2010-05-25
	Agriculture and Fisheries	3063	2011-01-24
	Environment	3118	2011-10-10

  

European Commission	Commission DG	Commissioner
	Justice and Consumers	REDING Viviane

Key events			
Date	Event	Reference	Summary
08/10/2008	Legislative proposal published	COM(2008)0614 	Summary
21/10/2008	Committee referral announced in Parliament, 1st reading		
01/12/2008	Debate in Council		
05/02/2009	Referral to associated committees announced in Parliament		
28/05/2009	Debate in Council		Summary
19/10/2009	Committee referral announced in Parliament, 1st reading		
03/12/2009	Debate in Council		Summary
25/05/2010	Debate in Council		Summary
07/06/2010	Debate in Council		Summary
10/12/2010	Debate in Council		Summary
24/01/2011	Debate in Council		Summary

01/02/2011	Vote in committee, 1st reading		Summary
22/02/2011	Committee report tabled for plenary, 1st reading	A7-0038/2011	
23/03/2011	Debate in Parliament		
24/03/2011	Decision by Parliament, 1st reading	T7-0116/2011	Summary
24/03/2011	Results of vote in Parliament		
23/06/2011	Decision by Parliament, 1st reading	T7-0293/2011	Summary
23/06/2011	Results of vote in Parliament		
10/10/2011	Act adopted by Council after Parliament's 1st reading		
25/10/2011	Final act signed		
25/10/2011	End of procedure in Parliament		
22/11/2011	Final act published in Official Journal		

Technical information	
Procedure reference	2008/0196(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 97/7/EC <a href="#">1992/0411(COD)</a> Amending Directive 1999/44/EC <a href="#">1996/0161(COD)</a> Amended by <a href="#">2013/0246(COD)</a> Amended by <a href="#">2018/0090(COD)</a> Amended by <a href="#">2022/0092(COD)</a> Amended by <a href="#">2022/0147(COD)</a> See also <a href="#">2015/2881(RSP)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/7/00125

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE442.789	25/06/2010	
Committee opinion	<span style="border: 1px solid red; padding: 2px;">ECON</span>	PE439.439	01/10/2010	
Amendments tabled in committee		PE450.954	25/10/2010	
Amendments tabled in committee		PE452.544	25/10/2010	
Amendments tabled in committee		PE452.545	25/10/2010	
Committee opinion	<span style="border: 1px solid red; padding: 2px;">JURI</span>	PE445.885	24/01/2011	
Committee report tabled for plenary, 1st reading/single				

reading		A7-0038/2011	22/02/2011	
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0116/2011	24/03/2011	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		T7-0293/2011	23/06/2011	<a href="#">Summary</a>

#### Council of the EU

Document type	Reference	Date	Summary
Draft final act	00026/2011/LEX	26/10/2011	

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0614 	08/10/2008	<a href="#">Summary</a>
Document attached to the procedure	SEC(2008)2544 	08/10/2008	
Document attached to the procedure	SEC(2008)2545 	08/10/2008	
Document attached to the procedure	SEC(2008)2547 	08/10/2008	
Commission response to text adopted in plenary	SP(2011)6334	14/07/2011	
Follow-up document	COM(2017)0259 	23/05/2017	<a href="#">Summary</a>
Follow-up document	SWD(2017)0169 	23/05/2017	
Follow-up document	SWD(2017)0170 	23/05/2017	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0009/2009	22/04/2009	
EESC	Economic and Social Committee: opinion, report	CES1190/2009	16/07/2009	

#### Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

## Consumer rights

2008/0196(COD) - 25/10/2011 - Final act

**PURPOSE:** to approximate certain aspects of Member States' laws concerning contracts concluded between consumers and traders.

**LEGISLATIVE ACT:** Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

**CONTENT:** following an agreement at first reading with the European Parliament, the Council adopted this Directive aimed at increasing the consumer protection across the European Union. The Directive fully harmonises the list of information to be given to consumers and the right of withdrawal for distance and off-premises purchases. Subject to certain exceptions, the consumer will have the right to withdraw from a distance or off-premises contract within a period of fourteen days without giving any reason and without any costs. For that purpose, he may make use of a standard withdrawal form that he will receive from the trader.

In the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during the withdrawal period after the conclusion of the contract.

In addition, the Directive provides for the list of minimal information the consumer shall receive when buying on-premises. Member States will be able to add supplementary information requirements depending on national circumstances.

The main points are as follows:

**Purpose:** to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of Member States concerning contracts concluded between consumers and traders.

**Scope:** the Directive shall apply to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

**Exceptions:** exemptions from the scope are listed in the Directive and include contracts for social services, healthcare, gambling, financial services, contracts relating to immovable property, package holidays, timeshares, the supply of foodstuffs, and beverages, and passenger transport services.

In addition, Member States may decide not to apply the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. They may define a lower value in their national legislation.

**Information requirements:** the Directive sets out minimum information requirements that the trader must provide the consumer both for contracts other than distance or off-premises contracts and for distance and off-premises contracts. With regard to distance and off-premises contracts, 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.

**Formal requirements:** the Directive lists the formal requirements for distance contracts and for off-premises contracts.

**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.

**Omission of information on right of withdrawal:** 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.

**Obligations of the trader in the event of withdrawal:** 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 from the contract.

**Obligations of the consumer in the event of withdrawal:** unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader. The deadline shall be met if the consumer sends back the goods 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:** the trader will in principle deliver the goods to the consumer as soon as possible and not later than 30 days from the conclusion of the contract. If the trader has failed to deliver and subject to specific conditions, the consumer will be entitled to terminate the contract and the trader will reimburse all sums paid under the contract.

**Fees for the use of payment means:** traders are prohibited from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

**Additional payments:** before the consumer is bound, the trader will seek the express consent of the consumer to such payment. If the trader has not obtained the express consent, the consumer will be entitled to reimbursement of the payment.

**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.

**On communication by phone:** where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate. This is without prejudice to the right of telecommunication services providers to charge for such calls.

**Reporting by the Commission and review:** the Commission shall submit a report on the application of this Directive by 13 December 2016, including in particular an evaluation of the provisions of the Directive regarding digital content including the right of withdrawal, and accompanied, where necessary, by legislative proposals to adapt the Directive to developments in the field of consumer rights.

ENTRY INTO FORCE: 12 December 2011.

TRANSPOSITION: 13 December 2013.

APPLICATION: 13 June 2014.

## Consumer rights

2008/0196(COD) - 25/05/2010

In public session, the Council held a **policy debate** on a draft directive aimed at improving the functioning of the internal market while ensuring a high level of consumer rights across the EU, by revising and complementing four existing directives<sup>1</sup> and introducing new rules on delivery and the passing on of risk.

The outcome of this second ministerial debate, after the first one held on 3 December 2009, provides guidance and a solid basis for continuing work, pending the opinion of the European Parliament.

Ministers examined key political aspects of the proposal, notably concerning maximum harmonization as a general principle governing the directive and the level of harmonisation as regards consumer information, the right of withdrawal and guarantees (covered by chapters II to IV of the proposal) for distance contracts (including off-premises contracts) and face-to-face contracts.

All delegations **subscribed to the objective of an updated, clear and more uniform set of rules concerning consumer rights** when purchasing goods and services in order to contribute to a properly functioning internal market as well as to ensure a high level of protection for consumers. The Commission proposal covers the right to information and withdrawal when buying at a distance and off premises, refund when terminating a contract due to late delivery and remedies for faulty goods. There is also a ban on unfair contract terms.

## Consumer rights

2008/0196(COD) - 08/10/2008 - Legislative proposal

**PURPOSE:** to contribute to the better functioning of the business-to-consumer internal market by enhancing consumer confidence in the internal market and reducing business reluctance to trade cross-border.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** this proposal is a result of the review of the Consumer Acquis which covers a number of Directives on consumer protection. The Review was launched in 2004 with the objective to simplify and complete the existing regulatory framework.

The proposal aims at revising four Directives:

- Directive 85/577/EEC on contracts negotiated away from business premises,
- Directive 93/13/EEC on unfair terms in consumer contracts,
- Directive 97/7/EC on distance contracts,
- Directive 1999/44/EC on consumer sales and guarantees.

These four Directives provide for consumer contractual rights. They contain minimum harmonisation clauses meaning that Member States may maintain or adopt stricter consumer protection rules. Member States have made extensive use of this possibility. The outcome is a fragmented regulatory framework across the Community which causes significant compliance costs for businesses wishing to trade cross-border. The internal market effects of the fragmentation are a reluctance by businesses to sell cross-border to consumers which in turn reduces consumer welfare.

That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.

The European Parliament, in its [Resolution](#) of 6 September 2007 recommended that legislative action is taken and expressed its preference for the adoption of an instrument taking the form of a horizontal Directive based on full targeted harmonisation.

**CONTENT:** the purpose of the proposal is to contribute to the proper functioning of the business-to-consumer internal market and achieve a high common level of consumer protection by **fully harmonising** the key aspects of consumer contract law which are relevant for the internal market.

- Chapter I contains the common definitions such as 'consumer' and 'trader' and lays down the principle of full harmonisation.
- Chapter II contains a core of information to be provided by traders prior to the conclusion of all consumer contracts as well as an information obligation on intermediaries concluding contracts on behalf of consumers.
- Chapter III which only applies to distance and off-premises contracts, provides for specific information requirements and regulates the right of withdrawal (length, exercise and effects) in a consistent manner. It also refers to a standard withdrawal form reproduced in Annex I(B).

- Chapter IV clarifies the provisions of Directive 99/44/EC. It maintains the principle that the trader is liable to the consumer for a period of two years if the goods are not in conformity with the contract. It introduces a new rule whereby the risk of loss or damage of the goods is transferred to the consumer only when he or a third person indicated by him other than the carrier acquires the material possession of the goods.

- Chapter V broadly reflects the provision of Directive 93/13/EEC. It applies to unfair contract terms which have not been individually negotiated, such as standard contract terms. Unfair terms are those creating significant imbalances in the rights and obligations of consumers and of traders and are not binding on consumers. In order to ensure legal certainty, the Directive contains two lists of unfair terms. Annex II contains a list of terms which in all circumstances are considered unfair. Annex III contains a list of terms which are deemed unfair unless the trader proves otherwise. These same lists apply in all Member States and may only be amended by the comitology procedure provided for by the Directive.

## Consumer rights

2008/0196(COD) - 24/01/2011

The Council agreed on a **general approach** for a draft directive on consumer rights. It also mandated the Presidency to pursue negotiations with the European Parliament with a view to reaching a first-reading agreement.

The general approach contains the following features:

**Objectives:** the purpose of the directive is to improve the functioning of the internal market and to contribute to a high level of consumer protection by approximating certain aspects of the laws of the Member States concerning distance and off-premises contracts. At the same time, it seeks to facilitate distance selling in order to boost business's confidence to trade across borders within the EU.

To that end, the Council's general approach fully harmonises the conditions on consumer information and the right of withdrawal in distance and off-premises contracts between traders and consumers.

The future rules would not prevent traders from offering consumers contractual arrangements which go beyond the protection provided in the directive.

Distance contracts would cover all cases where contracts are concluded with the exclusive use of means of distance communication, such as mail order, Internet, telephone or fax. Off-premises contracts would cover those contracts concluded with the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader, for example at the consumer's home or workplace.

**Scope:** the directive would apply to distance and off-premises contracts between a trader (be it public or private) and a consumer. It will also apply to contracts for the supply of water, gas, electricity and district heating. However, **it would not apply to contracts in various sectors such as: immovable property, construction of new buildings, financial services; passenger transport services; certain social services, healthcare and gambling.**

Digital content, such as computer programs, games or music that is not burned on a tangible medium, is not considered as a good within the meaning of the directive. On the contrary, tangible digital items such as CDs and DVDs, memory cards, etc., are to be considered within the scope of the directive. The downloading of digital content from Internet, considered as a services contract concluded by electronic means and performed immediately, will also fall within the scope of the directive, but without a right of withdrawal.

The new directive will replace directive 85/577/EEC on contracts negotiated away from business premises and directive 97/7/EC on distance contracts, which are currently in force. Moreover, it will complete the information requirements provided for in the "Services Directive"3 and in the "E-commerce Directive".

**Information requirements:** before the consumer is bound by any contract, the trader will have:

- to provide the consumer with the necessary compulsory information in a clear and comprehensible manner. This information will be given in a way appropriate to the means of distance communication used;
- to seek the consent of the consumer to any extra charges (in addition to the remuneration foreseen for the trader's main contractual obligation).

If the trader has not obtained the consumer's express consent, then the consumer will be exempted to pay them or will be entitled to reimbursement.

With respect to distance contracts to be concluded by electronic means, which would place the consumer under an obligation to make a payment, **the consumer will be bound by the contract only upon his explicit confirmation.** The possibility for member states to impose additional information requirements applicable to service providers established in their territory is maintained.

**Right of withdrawal:** subject to exceptions and certain obligations, the consumer will have the right to withdraw from a distance or off-premises contract, within a period of fourteen days, without giving any reason and without any costs. To exercise this right, the consumer has to inform the trader of his decision to withdraw from the contract, for instance by written letter, fax or email, or by means of a standard form, before the withdrawal period has expired. In this case, the trader will reimburse all payments received from the consumer no later than fourteen days from the day on which he receives the communication of withdrawal. For sale of goods contracts, the trader may withhold the reimbursement until he has received the goods back.

Member States will be able to introduce or maintain in their national legislation an interdiction of payment during the withdrawal period.

**Entry into effect:** the provisions of the directive would apply to contracts concluded after 30 months after the entry into force of the directive.

The Parliament is expected to deliver its opinion during the first half of 2011.

# Consumer rights

2008/0196(COD) - 07/06/2010

The Council took note of the German delegation's wish for European legislation against Internet cost traps ([doc. 10604/10](#)).

## Consumer rights

2008/0196(COD) - 03/12/2009

The Council held a **policy debate** on a draft directive. The outcome of the debate will provide guidance and a solid basis for continuing work in the coming months.

The interventions focused on **important challenges** ahead, including:

- the consumers and the citizens situation in the internal market;
- the technical development and the e-Commerce, which by nature is borderless;
- the cross-border dimension between regions, between neighbouring countries and within the whole internal market; and
- the need for balance between consumer rights and the obligations on traders.

Although the points of departure of the Member States sometimes differ, It is necessary to adopt more common rules to achieve a modern, clear European consumer policy providing legal certainty.

The Swedish Presidency will take into account views expressed by delegations when finalising a revised version of the draft directive.

There is a broad support for wide definitions of distance contracts and off premises contracts so as to ensure that consumers are entitled to specific information and a right of withdrawal in more cases than today.

A number of delegations expressed support for common rules on the **right of withdrawal** and a large majority of delegations mentioned a 14 day right of withdrawal for consumers both for distance and off premises contracts.

When it comes to the **rules on delivery and faulty goods**, several participants raised some concerns, while showing the willingness to pave the way for achieving solutions.

A large number of EU Member States think that there are specific areas which should not be covered by some or all parts of the directive, such as contracts on immovable property and financial services.

Previous negotiations proved that clarifications are deemed necessary to the text of the Commission proposal in order to well reflect essential elements such as the scope of the future directive, the coherence with other Community legislation and the interaction with the general contract law of the Member States.

## 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.

## Consumer rights

2008/0196(COD) - 10/12/2010

The Presidency informed the Council about the **global compromise** text regarding a draft directive on consumer rights, supported by a qualified majority of delegations within the Permanent Representatives Committee, in order to reach a general approach at a forthcoming Council meeting.

Pending the opinion of the European Parliament, expected next year, the draft directive seeks to harmonise rules on consumer rights for contracts concluded between traders and consumers at a distance and off-premises, for example cross-border sales through the internet.

Ministers took also note of the autumn edition of the "4th Consumer Market Scoreboard" published by the Commission (see Council documents [17300](#) and [15407](#)).

## Consumer rights

2008/0196(COD) - 24/03/2011 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament amended, under the ordinary legislative procedure, the proposal for a directive of the European Parliament and of the Council on consumer rights.

The vote on the legislative resolution was postponed until a later date.

The main amendments were as follows:

**Degree of harmonisation:** contrary to the initial Commission proposal for full harmonisation of EU legislation in all consumer rights fields, Parliament is in favour of the adoption of a **mixed approach of minimum and maximum harmonisation**, which would **fully harmonise areas such as information requirements, delivery deadlines and a right of withdrawal from distance and off-premises sales** (online, postal orders, etc.). The aim is to ensure transparency for businesses and consumers, while leaving **Member States free to retain higher standards** in other areas, notably in relation to remedies for "lack of conformity", e.g. goods that are not as described in the contract. The resolution notes that the full harmonisation of some key regulatory aspects is justified in order to secure a single regulatory framework for consumer protection and in order to considerably increase legal certainty for both consumers and traders in cross-border business.

**Scope:** whilst the Council has announced that it favours narrowing the original Commission proposal to focus on online sales only, Parliament has maintained the Commission proposal to **cover almost all sales**, with only a **few exclusions**, e.g. in financial services, social services, health care and online gambling.

Provisions regarding consumer information and certain provisions on the right of withdrawal will not apply to:

- distance and off-premises contracts: (a) relating to the formation, acquisition or conveyance of rights in **immovable property** or guarantees in immovable property, or relating to the construction or major modification of a building or the renting of a building or an apartment; (b) falling within the scope of Council Directive 90/314/EEC on package **travel, package holidays and package tours** or Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts;
- off-premises contracts for which the trader and the consumer immediately perform their contractual obligations and the payment to be made by the consumer does not exceed **EUR 40**, if such contracts, due to their nature, are usually concluded away from business premises. Member States may define a lower value in their national legislation.

Certain provisions regarding the right of withdrawal shall not apply to distance contracts for the provision of accommodation, transport, motor vehicle rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.

Certain provisions regarding consumer rights in respect of contract for sale of goods (e.g. delivery, passing of risk, ) do not apply to electricity, water and gas, where they are not put up for sale in a limited volume or set quantity.

**Digital content:** digital content transmitted to the consumer in a digital format, where the consumer obtains the possibility of use on a permanent basis or in a way similar to the physical possession of a good, should be treated as goods for the application of the Directive which apply to sales contracts. However, a withdrawal right should only apply until the moment the consumer chooses to download the digital content.

**Pre-contractual information requirements for distance and off-premises contracts:** the text states that before the consumer is bound by any distance or off-premises contract or any corresponding offer, the trader or the person acting on his behalf shall provide the consumer with certain specified information in a **clear and intelligible manner**.

Members propose to introduce new information requirements regarding: (a) the trader's business address, telephone, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently; (b) the total price inclusive of taxes; (c) the arrangements for payment, delivery, performance; (d) the date by which the trader undertakes to deliver the goods or to provide the service and the trader's complaint handling policy; (e) the duration of the contract where applicable or if the contract is open-ended or is to be extended automatically; (f) the existence and the conditions of deposits or other financial guarantees; (g) any interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where applicable.

With respect to off premises contracts, the information shall be given to the consumer on a **durable medium**, in so far as this appears appropriate in view of the nature of the contract, in plain, intelligible language and shall be **legible**. The consumer may in any event request that the information be provided on paper.

Regarding the right of withdrawal, the trader may use the model instructions on withdrawal set out in Annex I(A) and the model withdrawal form set out in Annex I(B).

As regards compliance with the information requirements, the **burden of proof** shall be upon the trader.

The text also contains amendments clarifying cases where the consumer is bound in a distance contract for the provision of services, particularly where the **contract has been concluded through the Internet or by telephone**.

**Withdrawal:** the consumer shall have a period of fourteen days to withdraw from a distance or off-premises contract, without giving any reason. The committee specifies that in the case of a distance or off-premises contract, the withdrawal period shall begin from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed contract document on a durable medium, if different from the day of conclusion of the contract.

If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period will be extended. In order to ensure legal certainty over time, a **one-year limitation period is introduced**. However, Member States are allowed to maintain existing legislation to extend that limitation period.

After withdrawal, the consumer will have the right to be reimbursed (including the costs of delivery) without undue delay and within 14 days. The period for reimbursement shall begin when the trader receives notice of withdrawal. If the price of the goods to be returned is not more than EUR 40, the text in parentheses should read as follows: 'at your own expense'.

**Delivery:** if the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible but in any event not later than **thirty days** from the day of the conclusion of the contract. Members state that the main difficulties encountered by consumers and the main source of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore the text harmonises the national rules on delivery and passing of risk. Where the trader has failed to fulfil his obligations to deliver the goods at the time agreed on with the consumer, the consumer shall be entitled to terminate the contract unless the goods are delivered within a new period to be determined by the consumer, which shall not exceed seven days. To that end, the consumer shall give prior notice **in writing** to the trader, specifying the new delivery period and stating his intention to terminate the contract in the event that the delivery does not take place by the end of that new delivery period. If, upon expiry of that period, no action has been taken, the consumer shall be deemed to have withdrawn from the contract.

The consumer shall be entitled to terminate the contract with immediate effect where the trader has implicitly or explicitly refused to deliver the goods, or where compliance with the agreed time of delivery is regarded as an essential element of the contract, taking into account the circumstances attending the conclusion of the contract. Upon termination of the contract, the trader shall immediately, and in any event not later than seven days after the termination of the contract, reimburse all sums paid under the contract.

In the case of a distance contract, the consumer shall be entitled to require the trader to deliver the goods or supply the service in another Member State. The trader shall meet the consumer's request if this is technically feasible and if the consumer agrees to bear all the related costs. The trader shall in any event state those costs in advance.

**Duration of contracts:** Members consider that contracts concluded between consumers and traders shall not stipulate an initial commitment period of more than 12 months. At the end of the initial 12-month commitment period, consumers shall be entitled to terminate the contract at any time.

**Remedy where there is lack of conformity:** Parliament proposes **hierarchy of remedies**, although Member States would retain the option of taking alternative measures, should they be both necessary and consistent with the principles of proportionality and effectiveness. Consumers would first be entitled to have the lack of conformity of the goods remedied by repair or replacement. Secondly, they would be entitled to have the price reduced

appropriately or the sales contract rescinded. The consumer may insist on a reasonable reduction in price or rescission of the contract, where one of the following situations exists: (i) the consumer is entitled neither to repair nor replacement; (ii) the trader has refused explicitly or by his conduct to remedy the lack of conformity.

With regard to **time limits and the burden of proof**, the requirement to inform traders of the lack of conformity is deleted. In addition, in this area as well Member States would have the option of enacting or maintaining legal provisions which offer consumers a higher level of protection.

**Contractual terms:** Members propose that this chapter should apply to contract terms in contracts which have not been individually negotiated. With regard to the degree of harmonisation, Members state that certain contract terms are unfair in all circumstances. Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances, as well as contract terms presumed to be unfair. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader.

**Review:** one year after transposition, the Commission shall submit a report on the application of the Directive and make legislative proposals, accompanying the report, to adapt the Directive to developments in the field of consumer rights.

## Consumer rights

2008/0196(COD) - 28/05/2009

The Presidency presented a **progress report on the discussions** held since the Commission presented the proposal in October 2008.

Following a first examination of the text, the work in the Council preparatory bodies concentrated on a number of key aspects of the proposal related to definitions, the scope of the directive, information requirements and the withdrawal right for off-premises and distance contracts.

## Consumer rights

2008/0196(COD) - 23/05/2017 - Follow-up document

The Commission presents a report on the application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights (CRD). In accordance with the CRD, the report must assess in particular, the provisions on digital content and the right of withdrawal.

**Transposition and implementation:** the Directive had to be transposed into the national laws of the Member States by 13 December 2013, with a view to become applicable in all EU Member States from 13 June 2014. Nevertheless, 17 Member States were late with their transposition and the Directive became applicable in all 28 Member States only from the end of 2014.

Following several bilateral structured dialogues with the national authorities concerned (EU Pilot cases), Member States made significant changes to their transposition laws. However, the Commission **continues its bilateral dialogue with most of them to ensure full compliance**. In June 2014, the Commission services issued a guidance document aiming to help national authorities and courts to apply the Directive in a uniform and consistent way.

**Main results of the evaluation:** the comparative analysis of the legislative situation in all Member States before and after the Directive was transposed has also highlighted that consumer protection has been **strengthened** in most, if not all, Member States.

The Directive has reduced the regulatory fragmentation among Member States, thereby helping to **increase consumer trust in cross-border sales**. Analysis by Eurostat shows an increase of online cross-border purchases between 2012 and 2016.

Overall, the Directive is considered to be **coherent** with other EU legislation, and no major problems have been identified. The evaluation also concluded that the original objectives of the Directive remain valid.

However, the evaluation highlighted **some factors that limited the effectiveness of the CRD**, such as a lack of awareness among consumers and traders of the Directive's provisions. There are also difficulties in interpreting some provisions such as:

the definition of the 'basic rate';

the notion of outside the 'business premises' in off-premises contracts;

the distinction between a digital content contract and a contract for paid online services;

the moment from which the 14-day cooling-off period starts as regards contracts containing elements of both sales and services contracts;

the calculation of the diminished value of goods in cases where consumers exercise their right of withdrawal after having used the goods more than necessary to establish their nature, characteristics and functioning.

A lack of compliance by traders, and the different levels of penalties put in place by Member States for breaches of the Directive might also be problematic.

**Rules on digital content:** for the first time in EU consumer and marketing law, the Directive lays down specific pre-contractual information requirements for digital content and rules on the withdrawal from contracts for digital content that is not supplied on a tangible medium.

Some interested parties consider that **the application of the CRD to 'free' digital content is not absolutely clear**.

Digital content remains a key area where consumers do not feel as protected as in sales and

service contracts. The data showed that the lowest level of awareness was reported for **pre-contractual information requirements** on digital content and digital content withdrawal rules. In particular, traders do not generally inform consumers of when the latter would lose their right of withdrawal.

The evaluation also found that there could be scope for re-assessing some of the CRD rules on digital content to better match them with current needs within the EU. In particular, the CRD does not currently apply to the **provision of 'free' online services**, allowing the creation, processing, storing or sharing of data that is produced by the consumer.

**Way forward:** the Commission will follow up the evaluation's findings by:

promoting consumers' and traders' awareness of their rights and obligations through a pilot project for training SMEs in 2016;

considering further guidance on the provisions which the evaluation found to be perceived as lacking clarity;

steering a self-regulatory exercise with a view to reach a multi-stakeholder agreement on a set of key principles for a better presentation of both pre-contractual information under the CRD and standard contract terms;

further examining possible targeted amendments to the Directive regarding:

- | extending its scope to include contracts for 'free' digital services and thus applying the pre-contractual information requirements and the right of withdrawal to any digital services;
- | simplifying some of the existing information requirements, for example by allowing traders to use more modern means of communication for their exchanges with consumers;
- | reducing the burden on traders, especially SMEs;
- | increasing the transparency of the information that online marketplaces provide consumers about the identity and quality ('trader' or 'consumer') of the supplier, and about the differences in the level of consumer protection when contracting with a trader rather than another consumer.

Lastly, the Commission will step up the enforcement of the Directive, including through common actions in the framework of the [Consumer Protection Cooperation Regulation](#).