

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts - Statement by the Council and the Parliament re Article 6 (1) - Statement by the Commission re Article 3 (1), first indent

Official Journal L 144 , 04/06/1997 P. 0019 - 0027

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189b of the Treaty³, in the light of the joint text approved by the Conciliation Committee on 27 November 1996,

(1) Whereas, in connection with the attainment of the aims of the internal market, measures must be taken for the gradual consolidation of that market;

(2) Whereas the free movement of goods and services affects not only the business sector but also private individuals; whereas it means that consumers should be able to have access to the goods and services of another Member State on the same terms as the population of that State;

(3) Whereas, for consumers, cross-border distance selling could be one of the main tangible results of the completion of the internal market, as noted, inter alia, in the communication from the Commission to the Council entitled 'Towards a single market in distribution'; whereas it is essential to the smooth operation of the internal market for consumers to be able to have dealings with a business outside their country, even if it has a subsidiary in the consumer's country of residence;

(4) Whereas the introduction of new technologies is increasing the number of ways for consumers to obtain information about offers anywhere in the Community and to place orders; whereas some Member States have already taken different or diverging measures to protect consumers in respect of distance selling, which has had a detrimental effect on competition between businesses in the internal market; whereas it is therefore necessary to introduce at Community level a minimum set of common rules in this area;

(5) Whereas paragraphs 18 and 19 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a

¹ OJ No C 156, 23. 6. 1992, p. 14 and OJ No C 308, 15. 11. 1993, p. 18.

² OJ No C 19, 25. 1. 1993, p. 111.

³ Opinion of the European Parliament of 26 May 1993 (OJ No C 176, 28. 6. 1993, p. 95), Council common position of 29 June 1995 (OJ No C 288, 30. 10. 1995, p. 1) and Decision of the European Parliament of 13 December 1995 (OJ No C 17, 22. 1. 1996, p. 51). Decision of the European Parliament of 16 January 1997 and Council Decision of 20 January 1997.

consumer protection and information policy⁴ point to the need to protect the purchasers of goods or services from demands for payment for unsolicited goods and from high-pressure selling methods;

(6) Whereas paragraph 33 of the communication from the Commission to the Council entitled 'A new impetus for consumer protection policy', which was approved by the Council resolution of 23 June 1986⁵, states that the Commission will submit proposals regarding the use of new information technologies enabling consumers to place orders with suppliers from their homes;

(7) Whereas the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy⁶ calls upon the Commission to give priority to the areas referred to in the Annex to that resolution; whereas that Annex refers to new technologies involving teleshopping; whereas the Commission has responded to that resolution by adopting a three-year action plan for consumer protection policy in the European Economic Community (1990-1992); whereas that plan provides for the adoption of a Directive;

(8) Whereas the languages used for distance contracts are a matter for the Member States;

(9) Whereas contracts negotiated at a distance involve the use of one or more means of distance communication; whereas the various means of communication are used as part of an organized distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer; whereas the constant development of those means of communication does not allow an exhaustive list to be compiled but does require principles to be defined which are valid even for those which are not as yet in widespread use;

(10) Whereas the same transaction comprising successive operations or a series of separate operations over a period of time may give rise to different legal descriptions depending on the law of the Member States; whereas the provisions of this Directive cannot be applied differently according to the law of the Member States, subject to their recourse to Article 14; whereas, to that end, there is therefore reason to consider that there must at least be compliance with the provisions of this Directive at the time of the first of a series of successive operations or the first of a series of separate operations over a period of time which may be considered as forming a whole, whether that operation or series of operations are the subject of a single contract or successive, separate contracts;

(11) Whereas the use of means of distance communication must not lead to a reduction in the information provided to the consumer; whereas the information that is required to be sent to the consumer should therefore be determined, whatever the means of communication used; whereas the information supplied must also comply with the other relevant Community rules, in particular those in Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising⁷; whereas, if exceptions are made to the obligation to provide information, it is up to the consumer, on a discretionary basis, to request certain basic

⁴ OJ No C 92, 25. 4. 1975, p. 1.

⁵ OJ No C 167, 5. 7. 1986, p. 1.

⁶ OJ No C 294, 22. 11. 1989, p. 1.

⁷ OJ No L 250, 19. 9. 1984, p. 17.

information such as the identity of the supplier, the main characteristics of the goods or services and their price;

(12) Whereas in the case of communication by telephone it is appropriate that the consumer receive enough information at the beginning of the conversation to decide whether or not to continue;

(13) Whereas information disseminated by certain electronic technologies is often ephemeral in nature insofar as it is not received on a permanent medium; whereas the consumer must therefore receive written notice in good time of the information necessary for proper performance of the contract;

(14) Whereas the consumer is not able actually to see the product or ascertain the nature of the service provided before concluding the contract; whereas provision should be made, unless otherwise specified in this Directive, for a right of withdrawal from the contract; whereas, if this right is to be more than formal, the costs, if any, borne by the consumer when exercising the right of withdrawal must be limited to the direct costs for returning the goods; whereas this right of withdrawal shall be without prejudice to the consumer's rights under national laws, with particular regard to the receipt of damaged products and services or of products and services not corresponding to the description given in the offer of such products or services; whereas it is for the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal;

(15) Whereas it is also necessary to prescribe a time limit for performance of the contract if this is not specified at the time of ordering;

(16) Whereas the promotional technique involving the dispatch of a product or the provision of a service to the consumer in return for payment without a prior request from, or the explicit agreement of, the consumer cannot be permitted, unless a substitute product or service is involved;

(17) Whereas the principles set out in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 apply; whereas the consumer's right to privacy, particularly as regards freedom from certain particularly intrusive means of communication, should be recognized; whereas specific limits on the use of such means should therefore be stipulated; whereas Member States should take appropriate measures to protect effectively those consumers, who do not wish to be contacted through certain means of communication, against such contacts, without prejudice to the particular safeguards available to the consumer under Community legislation concerning the protection of personal data and privacy;

(18) Whereas it is important for the minimum binding rules contained in this Directive to be supplemented where appropriate by voluntary arrangements among the traders concerned, in line with Commission recommendation 92/295/EEC of 7 April 1992 on codes of practice for the protection of consumers in respect of contracts negotiated at a distance⁸;

(19) Whereas in the interest of optimum consumer protection it is important for consumers to be satisfactorily informed of the provisions of this Directive and of codes of practice that may exist in this field;

(20) Whereas non-compliance with this Directive may harm not only consumers but also competitors; whereas provisions may therefore be laid down enabling public

⁸ OJ No L 156, 10. 6. 1992, p. 21.

bodies or their representatives, or consumer organizations which, under national legislation, have a legitimate interest in consumer protection, or professional organizations which have a legitimate interest in taking action, to monitor the application thereof;

(21) Whereas it is important, with a view to consumer protection, to address the question of cross-border complaints as soon as this is feasible; whereas the Commission published on 14 February 1996 a plan of action on consumer access to justice and the settlement of consumer disputes in the internal market; whereas that plan of action includes specific initiatives to promote out-of-court procedures; whereas objective criteria (Annex II) are suggested to ensure the reliability of those procedures and provision is made for the use of standardized claims forms (Annex III);

(22) Whereas in the use of new technologies the consumer is not in control of the means of communication used; whereas it is therefore necessary to provide that the burden of proof may be on the supplier;

(23) Whereas there is a risk that, in certain cases, the consumer may be deprived of protection under this Directive through the designation of the law of a non-member country as the law applicable to the contract; whereas provisions should therefore be included in this Directive to avert that risk;

(24) Whereas a Member State may ban, in the general interest, the marketing on its territory of certain goods and services through distance contracts; whereas that ban must comply with Community rules; whereas there is already provision for such bans, notably with regard to medicinal products, under Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁹ and Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use¹⁰,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 : Object

The object of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning distance contracts between consumers and suppliers.

Article 2 : Definitions

For the purposes of this Directive:

(1) 'distance contract' means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

⁹ OJ No L 298, 17. 10. 1989, p. 23.

¹⁰ OJ No L 113, 30. 4. 1992, p. 13.

(2) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(3) 'supplier' means any natural or legal person who, in contracts covered by this Directive, is acting in his commercial or professional capacity;

(4) 'means of distance communication' means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties. An indicative list of the means covered by this Directive is contained in Annex I;

(5) 'operator of a means of communication' means any public or private natural or legal person whose trade, business or profession involves making one or more means of distance communication available to suppliers.

Article 3 : Exemptions

1. This Directive shall not apply to contracts:

- relating to financial services, a non-exhaustive list of which is given in Annex II,
- 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 or relating to other immovable property rights, except for rental,
- concluded at an auction.

2. Articles 4, 5, 6 and 7 (1) shall not apply:

- to contracts for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen,
- to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period; exceptionally, in the case of outdoor leisure events, the supplier can reserve the right not to apply Article 7 (2) in specific circumstances.

Article 4 : Prior information

1. In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:

- (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- (b) the main characteristics of the goods or services;
- (c) the price of the goods or services including all taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;

- (f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);
 - (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
 - (h) the period for which the offer or the price remains valid;
 - (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.
2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.
3. Moreover, in the case of telephone communications, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

Article 5 : Written confirmation of information

1. The consumer must receive written confirmation or confirmation in another durable medium available and accessible to him of the information referred to in Article 4 (1) (a) to (f), in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to conclusion of the contract in writing or on another durable medium available and accessible to him.

In any event the following must be provided:

- written information on the conditions and procedures for exercising the right of withdrawal, within the meaning of Article 6, including the cases referred to in the first indent of Article 6 (3),
- 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 conclusion for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

2. Paragraph 1 shall not apply to services which are performed through the use of a means of distance communication, where they are supplied on only one occasion and are invoiced by the operator of the means of distance communication. Nevertheless, the consumer must in all cases be able to obtain the geographical address of the place of business of the supplier to which he may address any complaints.

Article 6 : Right of withdrawal

1. For any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. 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 period for exercise of this right shall begin:

- in the case of goods, from the day of receipt by the consumer where the obligations laid down in Article 5 have been fulfilled,
- in the case of services, from the day of conclusion of the contract or from the day on which the obligations laid down in Article 5 were fulfilled if they are fulfilled after conclusion of the contract, provided that this period does not exceed the three-month period referred to in the following subparagraph.
- If the supplier has failed to fulfil the obligations laid down in Article 5, the period shall be three months. The period shall begin:
 - in the case of goods, from the day of receipt by the consumer,
 - in the case of services, from the day of conclusion of the contract.

If the information referred to in Article 5 is supplied within this three-month period, the seven working day period referred to in the first subparagraph shall begin as from that moment.

2. Where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse 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. Such reimbursement must be carried out as soon as possible and in any case within 30 days.

3. Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraph 1 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 referred to in paragraph 1,
- 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 made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire 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.

4. The Member States shall make provision in their legislation to ensure that:

- if the price of goods or services is fully or partly covered by credit granted by the supplier, or

- if that price is fully or partly covered by credit granted to the consumer by a third party on the basis of an agreement between the third party and the supplier, the credit agreement shall be cancelled, without any penalty, if the consumer exercises his right to withdraw from the contract in accordance with paragraph 1.

Member States shall determine the detailed rules for cancellation of the credit agreement.

Article 7 : Performance

1. Unless the parties have agreed otherwise, the supplier must execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order to the supplier.
2. Where a supplier fails to perform his side of the contract on the grounds that the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund of any sums he has paid as soon as possible and in any case within 30 days.
3. Nevertheless, Member States may lay down that the supplier may provide the consumer with goods or services of equivalent quality and price provided that this possibility was provided for prior to the conclusion of the contract or in the contract. The consumer shall be informed of this possibility in a clear and comprehensible manner. The cost of returning the goods following exercise of the right of withdrawal shall, in this case, be borne by the supplier, and the consumer must be informed of this. In such cases the supply of goods or services may not be deemed to constitute inertia selling within the meaning of Article 9.

Article 8 : Payment by card

Member States shall ensure that appropriate measures exist to allow a consumer:

- to request cancellation of a payment where fraudulent use has been made of his payment card in connection with distance contracts covered by this Directive,
- in the event of fraudulent use, to be recredited with the sums paid or have them returned.

Article 9 : Inertia selling

Member States shall take the measures necessary to:

- 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,
- exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

Article 10 : Restrictions on the use of certain means of distance communication

1. Use by a supplier of the following means requires the prior consent of the consumer:

- automated calling system without human intervention (automatic calling machine),
- facsimile machine (fax).

2. Member States shall ensure that means of distance communication, other than those referred to in paragraph 1, which allow individual communications may be used only where there is no clear objection from the consumer.

Article 11 : Judicial or administrative redress

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers.

2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:

- (a) public bodies or their representatives;
- (b) consumer organizations having a legitimate interest in protecting consumers;
- (c) professional organizations having a legitimate interest in acting.

3. (a) Member States may stipulate that the burden of proof concerning the existence of prior information, written confirmation, compliance with time-limits or consumer consent can be placed on the supplier.

(b) Member States shall take the measures needed to ensure that suppliers and operators of means of communication, where they are able to do so, cease practices which do not comply with measures adopted pursuant to this Directive.

4. Member States may provide for voluntary supervision by self-regulatory bodies of compliance with the provisions of this Directive and recourse to such bodies for the settlement of disputes to be added to the means which Member States must provide to ensure compliance with the provisions of this Directive.

Article 12 : Binding nature

1. The consumer may not waive the rights conferred on him by the transposition of this Directive into national law.

2. Member States shall take the measures needed to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-member country as the law applicable to the contract if the latter has close connection with the territory of one or more Member States.

Article 13 : Community rules

1. The provisions of this Directive shall apply insofar as there are no particular provisions in rules of Community law governing certain types of distance contracts in their entirety.
2. Where specific Community rules contain provisions governing only certain aspects of the supply of goods or provision of services, those provisions, rather than the provisions of this Directive, shall apply to these specific aspects of the distance contracts.

Article 14 : Minimal clause

Member States may introduce or maintain, in the area covered by this Directive, more stringent provisions compatible with the Treaty, to ensure a higher level of consumer protection. Such provisions shall, where appropriate, include a ban, in the general interest, on the marketing of certain goods or services, particularly medicinal products, within their territory by means of distance contracts, with due regard for the Treaty.

Article 15 : Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than three years after it enters into force. They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The procedure for such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.
4. No later than four years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive, accompanied if appropriate by a proposal for the revision thereof.

Article 16 : Consumer information

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, professional organizations to inform consumers of their codes of practice.

Article 17 : Complaints systems

The Commission shall study the feasibility of establishing effective means to deal with consumers' complaints in respect of distance selling. Within two years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the results of the studies, accompanied if appropriate by proposals.

Article 18

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 20 May 1997.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

J. VAN AARTSEN

ANNEX I

Means of communication covered by Article 2 (4)

- Unaddressed printed matter
- Addressed printed matter
- Standard letter
- Press advertising with order form
- Catalogue
- Telephone with human intervention
- Telephone without human intervention (automatic calling machine, audiotext)
- Radio
- Videophone (telephone with screen)
- Videotex (microcomputer and television screen) with keyboard or touch screen
- Electronic mail
- Facsimile machine (fax)
- Television (teleshopping).

ANNEX II

Financial services within the meaning of Article 3 (1)

- Investment services
- Insurance and reinsurance operations
- Banking services
- Operations relating to dealings in futures or options.
- Such services include in particular:
 - investment services referred to in the Annex to Directive 93/22/EEC (1); services of collective investment undertakings,
 - services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/646/EEC (2);
 - operations covered by the insurance and reinsurance activities referred to in:
 - Article 1 of Directive 73/239/EEC (3),
 - the Annex to Directive 79/267/EEC (4),
 - Directive 64/225/EEC (5),
 - Directives 92/49/EEC (6) and 92/96/EEC (7).

(1) OJ No L 141, 11. 6. 1993, p. 27.

(2) OJ No L 386, 30. 12. 1989, p. 1. Directive as amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

(3) OJ No L 228, 16. 8. 1973, p. 3. Directive as last amended by Directive 92/49/EEC (OJ No L 228, 11. 8. 1992, p. 1).

(4) OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).

(5) OJ No 56, 4. 4. 1964, p. 878/64. Directive as amended by the 1973 Act of Accession.

(6) OJ No L 228, 11. 8. 1992, p. 1.

(7) OJ No L 360, 9. 12. 1992, p. 1.

Statement by the Council and the Parliament re Article 6 (1)

The Council and the Parliament note that the Commission will examine the possibility and desirability of harmonizing the method of calculating the cooling-off period under existing consumer-protection legislation, notably Directive 85/577/EEC of 20 December 1985 on the protection of consumers in respect of contracts negotiated away from commercial establishments ('door-to-door sales') (1).

(1) OJ No L 372, 31. 12. 1985, p. 31.

Statement by the Commission re Article 3 (1), first indent

The Commission recognizes the importance of protecting consumers in respect of distance contracts concerning financial services and has published a Green Paper entitled 'Financial services: meeting consumers' expectations'. In the light of reactions to the Green Paper the Commission will examine ways of incorporating consumer protection into the policy on financial services and the possible legislative implications and, if need be, will submit appropriate proposals.