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*Committee on the Internal Market and Consumer Protection*

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**2008/0196(COD)**

9.6.2010

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on consumer rights  
(COM(2008)0614 – C7-0349/2008 – 2008/0196(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

### **on the proposal for a directive of the European Parliament and of the Council on consumer rights**

**(COM(2008)0614 – C7-0349/2008 – 2008/0196(COD))**

#### **(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0614),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0349/2008),
  - having regard to the communication from the Commission to the European Parliament and the Council entitled: 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
  - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 16 December 2009<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer protection and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A7 0000/2010),
1. Adopts the position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

## AMENDMENTS BY PARLIAMENT\*

### to the Commission proposal

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#### DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty ~~establishing the European Community~~ *on the Functioning of the European Union*, and in particular Article ~~95~~*114* thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the *ordinary legislative procedure* ~~procedure laid down in Article 251 of the EC Treaty~~<sup>3</sup>,

Whereas:

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises<sup>4</sup>, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>5</sup>, 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<sup>6</sup>, 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<sup>7</sup>, lay down a number of contractual rights for consumers.
- (2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace

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\* Political amendments: new or replacement text is marked in bold italics and deletions are indicated by strikethrough. Technical corrections and adaptations by the services: new or replacement text is marked in italics and deletions are indicated by strikethrough.

<sup>1</sup> OJ C ..., p. ... .

<sup>2</sup> OJ C ..., p. ... .

<sup>3</sup> OJ C ..., p. ... .

<sup>4</sup> OJ L 372, 31.12.1985, p. 31.

<sup>5</sup> OJ L 95, 21.4.1993, p. 29.

<sup>6</sup> OJ L 144, 4.6.1997, p. 19. ~~Directive, as last amended by Directive 2007/64/EC (OJ L 319, 5.12.2007, p. 1).~~

<sup>7</sup> OJ L 171, 7.7.1999, p. 12.

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.

- (3) Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof.
- (4) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer contract law is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the respect of the principle of subsidiarity.
- (5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited by consumers. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual entrepreneurs) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to the better functioning of the business to consumer internal market.
- (6) The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing Community legislation in the field of consumer contracts concluded at a distance or away from business premises consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on consumer contract law diverge significantly.
- (7) These disparities create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines

consumer confidence in the internal market. The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the Community. This problem is particularly acute in the light of new market developments.

- (8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Community. The effect will be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. These barriers can only be eliminated by establishing uniform rules at Community level. Furthermore consumers will enjoy a high common level of protection across the Community.
- (9) The field harmonised by this Directive should cover certain aspects of business to consumer contracts. These are rules on information to be provided before conclusion and during performance of the contract, the right of withdrawal for distance and off-premises contracts, consumer rights specific to contracts of sale and unfair contract terms in consumer contracts.
- (10) The provisions of this Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council applicable to contractual obligations (Rome I)<sup>1</sup>.
- (11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection. For this reason the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps.
- (12) The new definition of distance contract should cover all cases where ~~sales and service~~ contracts **concerning the provision of a good or service** are concluded **without the simultaneous physical presence of the parties and** using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). This should create a level playing field for all distance traders. ~~It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.~~
- (13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader ~~is an occasional distance seller or that he~~ uses an organised scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.
- (14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business

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<sup>1</sup> OJ L 177, 4.7.2008, p. 6.

premises, for example at the consumer's home or workplace. In an off-premises context, consumers are *temporarily in a special situation under which is different from the situation in a shop, e.g. from a psychological pressure point of view and as regards the scope for comparing goods and prices*, no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract.

- (15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of business for the trader. Market stalls and fair stands should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.
- (16) ~~The definition of durable medium~~ **Durable media** should include in particular ~~documents on paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard drive disks of the computer~~ **computers** on which the electronic mail or a pdf file is **files saved in unmodifiable form are** stored. **Electronic mail and Internet sites as such should not be regarded as durable media.**
- (17) Consumers should be entitled to receive information before the conclusion of the **distance or off-premises** contract. ~~However traders should not have to provide the information when already apparent from the context. For example in an on-premises transaction, the main characteristics of a product, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off-premises transactions, the trader should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.~~
- (18) Traders should be obliged to inform consumers in advance of any arrangement resulting in the consumers paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumers' credit or debit card.
- (19) In the case of public auctions, due to the nature and tradition of that sales method, the auctioneer may instead of communicating the geographical address and the identity of the seller for whom he is selling the goods replace that with his own contact details.
- ~~(20) The consumer should know whether he is contracting with the trader or with an intermediary acting on behalf of another consumer, since in the latter case the consumer may not enjoy the protection under this Directive. Therefore the intermediary should inform of this fact and the consequences thereof. The notion of intermediary should not include online trading platforms which do not conclude the contract in the name of or on behalf of any other party.~~
- (21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case the trader should comply with a minimum set of

information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.

- (22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ~~which allows~~ **allowing** him, ***until expiry of the withdrawal period and with regard for the principles of good faith***, to ~~ascertain~~ **determine** the nature and ~~ascertain the~~ functioning of the ~~goods~~ **good**.
- (23) The current varying lengths of the withdrawal periods both between the Member States and for distance and off-premises contracts cause legal uncertainty and compliance costs. The same withdrawal period should apply to all distance and off-premises contracts.
- ~~(24) To ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>+</sup> should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days.~~
- (25) The rules on distance contracts should be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders as set out by Articles 9 and 11 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- (26) When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately, the withdrawal period should start when the consumer acquires the material possession of each individual good. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer or a third party indicated by the consumer acquires the material possession of the last lot or piece.
- (27) 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 should be extended. However, in order to ensure legal certainty over time, a ~~three-month~~ **one-year** limitation period should be introduced, provided that the trader has fully performed his contractual obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods, ~~or~~ **has fully provided the services ordered by the consumer** ***or, in the case of service contracts concluded for an indefinite period, has commenced the contractual provision of the service.***
- (28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised ~~standard~~ **model** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the Community-wide standard form relating for example to the font size.

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<sup>+</sup> OJ L 124, 8.6.1971, p. 1.

- (29) As experience shows that many consumers and traders prefer to communicate via the trader's website, there should be a possibility for the trader to give the consumer the option of filling in a web-based withdrawal form. In this case the trader should provide an acknowledgement of receipt by email without delay.
- (30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer, *with the exception of payments for express deliveries at the express wish of the consumer*.
- (31) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to ascertain the nature and functioning of the good. In this case the consumer should be liable for any diminished value of the goods. In order to ascertain the nature and functioning of a good, the consumer should only handle or try it in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. In order to ensure the effectiveness of the withdrawal right in service contracts, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the immediate performance of the service before the expiration of the withdrawal period, consumers should bear no cost for such a service.
- (32) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen days after having informed the trader about his decision to withdraw.
- (33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate, given the nature of the product, *and exercising a right of withdrawal would unfairly disadvantage the trader*. That is applicable *in particular to foodstuffs and other hygienically sensitive or perishable goods*, for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur).
- (34) Furthermore, in case of distance *and off-premises* contracts for the provision of services, for which the performance begins during the withdrawal period (e.g. data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement.
- (35) The Commission has found some key consumer problems in the home improvement sector where consumers are under high pressure to order expensive renovation works. The scope of the information and withdrawal rules should be clarified and extended in order to cover this kind of contract. Only contracts for the conveyance of interests in real property should be excluded from the scope of the rules on information and withdrawal rights applicable to distance and off-premises contracts.
- (36) The application of a right of withdrawal may be inappropriate for certain services relating to accommodation, transport and leisure. The conclusion of the corresponding contracts implies the setting aside of capacity which, if a right of withdrawal was introduced, the trader may find difficult to fill. Therefore these distance contracts

should not be covered by the provisions on consumer information and the right of withdrawal.

(37) For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of ***distance and*** off-premises contracts, except under strictly defined circumstances which can easily be proved. ~~Therefore, no right of withdrawal should apply for urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation as well as for supermarket home-delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household and should therefore not be subject to a right of withdrawal. The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on delivery and passing of risk.~~

(37a) *The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to harmonise the national rules on delivery and passing of risk.*

(37b) *Where the trader has failed to fulfil his obligations to deliver, the consumer should call upon him, on a durable medium, to make the delivery within a period of at least seven days and notify him of his intention to withdraw from the contract if delivery does not take place. Withdrawal should be deemed to have taken place on expiry of that period if no action has been taken. Without prejudice to his rights to damages, the consumer should be entitled to a refund within seven days of withdrawal if payment has already been made. It should be possible for Member States to adopt or maintain provisions of national law on other remedies in the event of non-delivery by the time limit set by the consumer, in order to ensure a higher level of protection for the consumer.*

(38) In the context of consumer sales, the delivery of goods can take place in various ways. Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking possession of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader.

(39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods. ***Where goods other than those ordered have been delivered, or in***

*the event of undershipment, the goods should be presumed not to be in conformity with the contract.*

- (39a) *Where there is lack of conformity of the goods with the contract, consumers should be entitled to have the goods restored to conformity with the contract free of charge, choosing either repair or replacement, or, failing this, to have the price reduced or the contract rescinded.*
- (40) *The consumer in the first place may require the seller to repair the goods or to replace them unless those remedies are impossible or disproportionate. Whether a remedy is disproportionate should be determined objectively. A remedy should be considered disproportionate if it imposes, in comparison with other remedies, unreasonable costs. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy. If the good is not in conformity with the contract, firstly, the consumer should have the possibility to require the trader to repair the goods or to replace them at the trader's choice unless the trader proves that those remedies are unlawful, impossible or causes the trader disproportionate effort. The trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity. The lack of spare parts should not be a valid ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.*
- (41) *The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials **and the cost of remedying the lack of conformity himself to a reasonable extent.** Furthermore, the consumer should not compensate the trader for the use of the defective goods.*
- ~~(42)~~ *When the trader has either refused or has more than once failed to remedy the lack of conformity ~~the~~ **The** consumer should be entitled to choose freely any of the available remedies **if he is not entitled to have the goods repaired or replaced.** The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity. **It is possible for Member States to adopt or maintain provisions of national law on the free choice of remedies in the event of lack of conformity, in order to ensure a higher level of protection for the consumer. However, those measures must be essential for protecting the consumer, proportionate and effective.***
- (42a) *Where the trader, as final seller, is liable to the consumer because of an act or omission by the producer, it should be ensured that the trader, as final seller, can pursue remedies against the person or persons liable in the contractual chain. To this end, Member States' national provisions should determine the person or persons liable, together with the relevant actions and procedure.*
- (42b) *With regard to lack of conformity, the consumer should be entitled to a two-year liability period. There should be a rebuttable presumption in his favour that any lack of conformity which has become apparent within six months after the risk passed to the consumer already existed when the risk passed. It should be possible for Member States to adopt or maintain provisions of national law on liability periods, duration for reversal of the burden of proof or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to*

*ensure a higher level of protection for the consumer. However, those measures must be essential for protecting the consumer, proportionate and effective.*

- (43) ~~Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.~~
- (44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights *under the national provisions in force*.
- (45) There is a need to protect consumers against unfair contract terms which have not been individually negotiated, such as standard contract terms. The rules on unfair terms should not apply to terms which the consumer agreed upon following a negotiation. Being afforded the possibility to choose between different contract terms which have been drafted by the trader or a third party on behalf of the trader should not be regarded as a negotiation.
- (46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect mandatory statutory or regulatory provisions of the Member States which comply with Community law. Similarly terms which reflect the principles or provisions of international conventions to which the Community or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.
- (47) Consumer contracts should be drafted in plain, intelligible language and be legible. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by ~~providing him with the terms on request (for on-premises contracts) or making those~~ *the terms otherwise available to him* (e.g. on the trader's website in respect of distance contracts) or attaching ~~standard terms~~ *them* to the ~~order form~~ *contract document* (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.
- (48) When making an assessment of good faith, particular regard should be made to the strength of the bargaining positions of the parties, whether the consumer was induced to accept the term and whether the goods or services were sold or supplied on the special order of the consumer. The requirement of good faith may be satisfied by the trader where he deals fairly and equitably with the other party whose legitimate interests he should take into account.
- (49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency

requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.

- (50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise. These same lists should apply in all Member States. ***However, Member States may adopt or maintain provisions designating additional terms as unfair in all circumstances or designating them clauses presumed to be unfair. However, those measures must be essential for protecting the consumer, proportionate and effective.***
- ~~(51) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>+</sup>.~~
- ~~(52) In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~
- ~~(53) The Commission's power to amend Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.~~
- (54) The Member States may use any concept of national contract law which fulfils the required objective that unfair contract terms should not be binding on the consumer.
- (55) The Member States should ensure that their courts or administrative authorities have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts.
- (56) In accordance with the Treaty, the Directive provides for a high level of consumer protection. Nothing in this Directive prevents traders from offering consumers contractual arrangements which go beyond the protection afforded by this Directive.
- (57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

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<sup>+</sup>OJ L 184, 17.7.1999, p. 23.

- (58) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and they must ensure that these are enforced. The sanctions should be effective, proportionate and dissuasive.
- (59) The consumer should not be deprived of the protection granted by this Directive. Where the law applicable to the contract is that of a third country, Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (60) The European Commission will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
- (61) Since inertia selling, which consists of unsolicited supplies of goods or services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')<sup>1</sup> but no contractual remedy is provided thereof, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the provision of any consideration for such unsolicited supplies.
- (61a) Provision should be made for a mutual evaluation process in which, during the transposition period for this Directive, Member States would first have to screen their legislation in order to ascertain what stricter, Treaty-compliant provisions are to be maintained or adopted in their legal system in order to ensure a higher level of protection for the consumer. At the latest by the end of the transposition period for this Directive, Member States should draw up a report on the results of this screening. Each report should be submitted to all other Member States and interested parties. Member States would then have six months in which to submit their observations on these reports. No later than one year after the transposition period for this Directive, and every three years thereafter, the Commission should draw up a summary report, accompanied where appropriate by legislative proposals. If necessary, the Commission could assist the Member States in devising a common method.***
- (61b) To ensure a high level of protection in all Member States, persons and organisations with a legitimate interest in consumer protection should be encouraged to notify the Member States and the Commission about their evaluations and issue non-binding recommendations so that they can be taken into account when this Directive is reviewed.***
- (62) Directive 2002/58/EC already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Article 10 of Directive 97/7/EC should be deleted.
- (63) ~~It is appropriate to review this Directive if some barriers to the internal market were identified. The review could lead to a Commission proposal to amend this Directive,~~

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<sup>1</sup> OJ L 149, 11.6.2005, p. 22.

~~which may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the acquis in order to achieve a high, common level of consumer protection.~~

- (64) Directives 85/577/EEC, 93/13/EEC and 97/7/EC and Directive 1999/44/EC should be repealed.
- (65) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.
- (66) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union.

HAVE ADOPTED THIS DIRECTIVE:

## Chapter I

### Subject matter, definitions and scope

#### Article 1 Subject matter

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

#### Article 2 Definitions

For the purpose of this Directive, the following definitions shall apply:

- (1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (2) 'trader' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession ~~and anyone acting in the name of or on behalf of a trader;~~
- (2a) *'goods' means any tangible movable item, with the exception of:*
  - (a) *items sold by way of execution or otherwise by authority of law,*
  - (b) *water and gas where they are not put up for sale in a limited volume or set quantity,*
  - (c) *electricity;*
- (2b) *'good made to the customer's specifications' means any non-prefabricated good made on the basis of an individual choice or decision by the customer;*
- (3) 'sales contract' means any contract *under which a trader passes property in goods to a consumer or undertakes to pass property in goods either immediately upon conclusion of the contract or at a point in the future, and under which the consumer undertakes to pay the price concerned* ~~for the sale of goods by the trader to the consumer including any mixed purpose contract having as its object both goods and service;~~
- ~~(4) 'goods' means any tangible movable item, with the exception of:~~
  - ~~a) goods sold by way of execution or otherwise by authority of law,~~

- b) ~~water and gas where they are not put up for sale in a limited volume or set quantity;~~
- e) ~~electricity;~~
- (5) 'service contract' means any contract ~~other than a sales contract~~ whereby *provision of* a service is ~~provided~~ by the trader to the consumer *is required*;
- (5a) '*mixed-purpose contract*' means any contract containing elements both of a sales contract and of a service contract;
- (6) 'distance contract' means any ~~sales or service~~ contract *for the provision of a good or service concluded between a trader and a consumer under an organised distance sales or service-provision scheme* where the trader *and the consumer*, for the conclusion of the contract, *are not simultaneously physically present, but, rather, make* exclusive use of one or more means of distance communication;
- ~~(7) 'means of distance communication' means any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties;~~
- (8) 'off-premises contract' means *any contract between a trader and a consumer for the provision of a good or service:*
- (a) ~~any sales or service contract~~ *which is* concluded away from business premises with the simultaneous physical presence of the trader and the consumer ~~or any sales or service contract for which an offer was made by the consumer in the same circumstances, or~~
- (aa) *for which an offer was made by the consumer with the simultaneous physical presence of the trader and the consumer away from business premises, or*
- (b) ~~any sales or service contract~~ *which is* concluded on business premises but ~~negotiated~~ *whose main components have been determined* away from business premises, with the simultaneous physical presence of the trader and the consumer;
- (9) 'business premises' means:
- (a) any immovable or movable retail premises, including seasonal retail premises, where the trader carries on his activity on a permanent basis, or
- (b) market stalls and fair stands where the trader carries on his activity on a regular or temporary basis;
- (10) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

- (11) ~~'order form' means an instrument setting out the contract terms, to be signed by the consumer with a view to concluding an off-premises contract;~~
- (12) ~~'product' means any good or service including immoveable property, rights and obligations;~~
- (13) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (14) ~~'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;~~
- (15) ~~'auction' means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication and where the highest bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;~~
- (16) 'public auction' means a method of sale where ~~goods are~~ **a good or a service is** offered by the trader to consumers, ~~who attend or are given the possibility to attend the auction in person~~ **during an event which is physically accessible to the public**, through a competitive bidding procedure run by ~~an~~ **a third party (the auctioneer) for pecuniary consideration; in an ascending price auction, the good or service goes to the consumer making** and where the highest ~~bid~~ bidder is bound to purchase the goods; **in a descending price auction, the good or service goes to the consumer who is first to agree immediately to purchase the good or service for the asking price;**
- (17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;
- (18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer, **in addition to discharging his legal obligations**, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;
- (19) ~~'intermediary' means a trader who concludes the contract in the name of or on behalf of the consumer;~~
- (20) ~~'ancillary~~ **linked** contract' means a contract by which the consumer acquires goods or services ~~related to~~ **and which forms a single commercial transaction with** a distance contract or an off-premises contract and these goods or services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader. **A single commercial transaction exists where the good or service covered by the linked contract serves to perform**

*the other contract or is intended for use of the good or service covered by the other contract.*

**Article 2a**  
**Amendment to Directive 2002/65/EC**

*Article 2(a) shall be replaced by the following:*

*'(a) 'distance contract' means any contract for the provision of a good or service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer, for the conclusion of the contract, are not simultaneously physically present, but, rather, make exclusive use of one or more means of distance communication;'*

**Article 3**  
**Scope**

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to sales and service contracts concluded between the trader and the consumer *for the provision of a good or service*.
- ~~2. This Directive shall only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.~~
- ~~3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council<sup>1</sup> and of Council Directive 90/314/EEC<sup>2</sup>.~~
- ~~4. Articles 5, 7, 9 and 11 shall be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council<sup>3</sup> and Directive 2000/31/EC of the European Parliament and of the Council<sup>4</sup>.~~

**Article 4**  
**Targeted full harmonisation**

1. *Save as otherwise provided by this Directive*, Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection. *Member States shall forward the text of diverging provisions of national law to the Commission.*

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<sup>1</sup> OJ L 280, 29.10.1994, p. 83.

<sup>2</sup> OJ L 158, 23.6.1990, p. 59.

<sup>3</sup> OJ L 376, 27.12.2006, p. 36.

<sup>4</sup> OJ L 178, 17.7.2000, p. 1.

- 1a. This Article shall not apply to the provisions of Chapter II as regards distance and off-premises contracts excluded from the scope of Chapter II under Article 4b.*
- 1b. This Article shall not apply to the provisions of Chapter IV as regards contracts excluded from the scope of Chapter IV under Article 21.*
- 1c. This Article shall not apply to the provisions of Chapter V as regards contracts excluded from the scope of Chapter V under Article 30.*

*Article 4a  
Periods, dates and time limits*

*Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits shall apply to the calculation of the periods contained in this Directive.*

**Chapter II**

*Consumer information and withdrawal right for distance and off-premises contracts*

*Article 4b  
Scope*

- 1. This Chapter shall apply to distance and off-premises contracts.*
- 2. This Chapter shall not apply to distance and off-premises contracts:*
  - (a) relating to immovable property rights, except for rental and works relating to immovable property;*
  - (b) falling within the scope of Council Directive 90/314/EEC or Directives 2002/65/EC, 2002/83/EC, 2008/48/EC or 2008/122/EC of the European Parliament and of the Council.*
- 3. This Chapter shall not apply to distance contracts:*
  - (a) concluded by means of automatic vending machines or automated commercial premises;*
  - (b) concluded with telecommunications operators through public payphones for their use, in so far as they relate to the use thereof.*
- 4. Articles 12 to 19 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.*

## Article 5

### ~~General~~ Information requirements *for distance and off-premises contracts*

1. ~~Prior to~~ ***In time for*** the conclusion of any sales or service ***distance and off-premises*** contract, the trader ***or any person acting in his name or on his behalf*** shall provide the consumer with the following information, if not already apparent from the ~~context~~ ***in a clear and intelligible manner and with regard for the principles of good faith:***
  - (a) the main characteristics of the ~~product~~ ***good or service***, to an extent appropriate to the medium and the ***good or service***;
  - (b) the ~~geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;~~
  - (ba) the business address of the trader plus his telephone and fax number and e-mail address, where available, so that the consumer can contact the trader quickly and communicate with him efficiently;***
  - (c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
  - (d) the arrangements for payment, delivery, performance and the complaint handling policy, ~~if they depart from the requirements of professional diligence;~~
  - (e) ~~the existence of~~ ***in so far as*** a right of withdrawal, ~~where applicable exists, the conditions, period and procedure for exercising that right; for this purpose, the trader may use the model instructions on withdrawal and the model withdrawal form in Annex I(A) and I(B) respectively or any other clearly worded statement;~~
  - ~~(f) the existence and the conditions of after-sales services and commercial guarantees, where applicable;~~
  - (g) the duration of the contract where applicable or if the contract is open-ended, the conditions for terminating the contract;
  - (h) the minimum duration of the consumer's obligations under the contract, where applicable;
  - (i) 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;
  - (j) the possibility of having recourse to an amicable dispute settlement, where applicable.***
2. In the case of a public auction, the information in paragraph 1(b) ***and (ba)*** may be replaced by the ~~geographical address and the identity of~~ ***equivalent details for*** the auctioneer.

- 2a. Member States shall not provide for any other formal requirements applicable to the model instructions on withdrawal in Annex I(A).**
3. The information referred to in paragraph 1 shall form an integral part of the sales or service *distance or off-premises* contract.
- 3a. Should the provisions of this Article run counter to other legislative provisions of the Union which regulate special contracts, the latter provisions shall take precedence and shall govern those special contracts.**
- 3b. For distance and off-premises contracts in connection with immovable property or transport, financial, healthcare and welfare services, Member States may adopt or maintain additional information requirements.**
- 3c. Member States may adopt or maintain additional information requirements for all distance and off-premises contracts for the provision of services for which, pursuant to Article 22(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, they impose additional information requirements applicable to providers established in their territory.**
- 3d. As regards compliance with the information requirements referred to in this Chapter, the burden of proof shall be incumbent on the trader.**

#### Article 6

##### Failure to provide information

1. If the trader has not complied with the information requirements on additional charges as referred to in Article 5(1)(c), the consumer shall not pay these additional charges.
2. Without prejudice to Articles 7(2), 13 and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective contract law remedies for any breach of Article 5.

#### ~~Article 7~~

##### ~~Specific information requirements for intermediaries~~

- ~~3. Prior to the conclusion of the contract, the intermediary shall disclose to the consumer, that he is acting in the name of or on behalf of another consumer and that the contract concluded, shall not be regarded as a contract between the consumer and the trader but rather as a contract between two consumers and as such falling outside the scope of this Directive.~~
- ~~4. The intermediary, who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.~~
- ~~5. This Article shall not apply to public auctions.~~

## Chapter III

### ~~Consumer information and withdrawal right for distance and off-premises contracts~~

#### ~~Article 8 Scope~~

~~This Chapter shall apply to distance and off-premises contracts.~~

#### ~~Article 9 Information requirements for distance and off-premises contracts~~

~~As regards distance or off-premises contracts, the trader shall provide the following information which shall form an integral part of the contract:~~

- ~~(a) — the information referred to in Articles 5 and 7 and, by way of derogation from Article 5(1)(d), the arrangements for payment, delivery and performance in all cases;~~
- ~~(b) — where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;~~
- ~~(c) — if different from his geographical address, the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;~~
- ~~(d) — the existence of codes of conduct and how they can be obtained, where applicable;~~
- ~~(e) — the possibility of having recourse to an amicable dispute settlement, where applicable;~~
- ~~(f) — that the contract will be concluded with a trader and as a result that the consumer will benefit from the protection afforded by this Directive.~~

#### Article 10

Formal requirements *rules for compliance with information requirements for* off-premises contracts

1. With respect to off-premises contracts, the information provided for in ~~Article 9~~ **Article 5** shall be given *in time for conclusion of the contract, in so far as this appears appropriate in view of the nature of the contract*, in the ~~order form contract document or on another durable medium~~ in plain and intelligible language and be legible. The order form shall include the standard withdrawal form set out in Annex I(B).
2. ~~An off-premises contract shall only be valid if the consumer signs an order form and in cases where the order form is not on paper, receives a copy of the order form on another durable medium.~~

3. Member States shall not impose any formal requirements other than those provided for in ~~paragraphs~~ **paragraph 1 and 2**.

#### Article 11

Formal requirements **rules for compliance with information requirements** for distance contracts

1. With respect to distance contracts, the information provided for in Article ~~9(a)~~ **5** shall be given or made available to the consumer ~~prior to~~ **in time for** the conclusion of the contract, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.
2. If the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.
3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the product and the total price referred to in Articles 5(1)(a) ~~and to~~ (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in **Article 5** ~~Articles 5 and 7~~ shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.
4. The consumer shall receive confirmation of all the information referred to in Article ~~59(a) to (f)~~, on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.
5. Member States shall not impose any formal requirements other than those provided for in paragraphs 1 to 4.

#### Article 12

Length and starting point of the withdrawal period

1. The consumer shall have a period of fourteen days to withdraw from a distance or off-premises contract, without giving any reason.
2. In the case of ~~an~~ **a distance or** off-premises contract **for the supply of goods**, the withdrawal period shall begin from the day ~~when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium. In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.~~ **In the case of the supply of goods in several parts or pieces, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires material possession of the final part or final piece.**

- 2a. In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.
- 2b. *In the case of an off-premises contract for the provision of services, the withdrawal period shall begin from the day when the consumer receives a copy of the signed contract document on a durable medium.*
- 2c. *In the case of a distance or off-premises mixed-purpose contract, the withdrawal period shall begin from the day on which the consumer acquires material possession of the good concerned and either the service covered by the mixed-purpose contract is provided or, in the case of a long-term service, provision of that service commences.*
3. The deadline referred to in paragraph 1 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that deadline.
4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.

#### Article 13

##### Omission of information on the right of withdrawal

1. If the trader has not provided the consumer with the information on the right of withdrawal in breach of Articles 5(1)(e), ~~9(b)~~, 10(1) and 11(4), the withdrawal period shall expire ~~three months~~ **one year** after the trader has fully performed his other contractual obligations.
- 1a. *In the case of service contracts concluded for an indefinite period, the withdrawal period referred to in paragraph 1 shall begin from the day of the conclusion of the contract.*

#### Article 14

##### Exercise of the right of withdrawal

1. *Before expiry of the withdrawal period*, the consumer shall inform the trader of his decision to withdraw on a durable medium. **For this purpose, the consumer may either in a statement addressed to the trader drafted in his own words or using use the standard model withdrawal form as set out in Annex I(B) or make any other clearly worded statement.**

Member States shall not provide for any other formal requirements applicable to this ~~standard~~ **model** withdrawal form.

2. For distance contracts ~~concluded on the Internet~~, the trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer **either to email electronically fill in and submit the standard model withdrawal form in Annex I(B) or any other withdrawal statement or to electronically fill in and submit the form on the trader's a website.** In ~~that~~ **the latter** case the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.

Article 15  
Effects of withdrawal

The exercise of the right of withdrawal shall terminate the obligations of the parties:

- (a) to perform the distance or off-premises contract, or
- (b) to conclude ~~an~~ **a distance or** off-premises contract, in cases where an offer was made by the consumer.

Article 16  
**Reimbursement** by the trader in case of withdrawal

1. The trader shall reimburse any payment received from the consumer within ~~thirty~~ **fourteen** days from the day on which he receives the communication of withdrawal.
  - 1a. ***If the consumer has expressly opted for a type of delivery other than a standard delivery, the trader shall not be required to reimburse the resulting additional costs.***
2. For sales **distance or off-premises contracts for the supply of goods**, the trader may withhold the reimbursement until he has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest, ***unless the trader has offered to collect the goods himself.***

Article 17  
Obligations of the consumer **to return goods** in the case of withdrawal

1. For sales **distance or off-premises contracts for the supply of goods** for which the material possession of the goods has been transferred to the consumer or at his request, to a third party before the expiration of the withdrawal period, 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, within fourteen days from the day on which he communicates his withdrawal to the trader, unless the trader has offered to collect the goods himself.

The consumer shall only be charged for the direct cost of returning the goods. ***He shall not be charged for that cost if unless the trader has agreed to bear it or the price of the goods to be returned is more than EUR 50.***
2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal right in accordance with Article ~~9(b)~~ **(5)(1)(e)**. ~~For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.~~

## Article 18

### Effects of the exercise of the right of withdrawal on ~~ancillary~~ **linked** contracts

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any ~~ancillary~~ **linked** contracts shall be automatically terminated, without any costs for the consumer **which are not provided for in this Directive**.
2. The Member States shall lay down detailed rules on the termination of such contracts.

## Article 19

### Exceptions from the right of withdrawal

1. In respect of distance **and off-premises** contracts, the right of withdrawal shall not apply as regards the following:
  - (a) services where performance has begun, with the consumer's prior express consent **on a durable medium**, before the end of the fourteen day period referred to in Article 12;
  - (b) the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader;
  - (c) the supply of goods made to the consumer's specifications or clearly personalized or which are liable to deteriorate or expire rapidly;
  - (ca) ***the supply of foodstuffs, beverages or other hygienically sensitive goods whose packaging or sealing has already been opened by the consumer;***
  - (cb) ***contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;***
  - (cc) ***contracts for which the consumer has specifically requested the trader to visit him at home for the purpose of carrying out repairs or maintenance; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;***
  - (d) the supply of wine, the price of which has been agreed upon at the time of the conclusion of the ~~sales~~ contract, the delivery of which can only take place beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;

- (e) the supply of sealed audio or video recordings or *sealed* computer software which were unsealed by the consumer;
- (f) the supply of newspapers, periodicals and magazines;
- (g) gaming and lottery services;
- (h) contracts concluded at an *a public* auction.

2. ~~In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:~~

- ~~(a) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;~~
- ~~(b) contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;~~
- ~~(c) contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.~~

3. The parties may agree not to apply ~~paragraphs~~ *paragraph* 1 and 2.

#### *Article 20*

##### *Excluded distance and off-premises contracts*

1. ~~Articles 8 to 19 shall not apply to distance and off-premises contracts:~~

- ~~(a) for the sale of immovable property or relating to other immovable property rights, except for rental and works relating to immovable property;~~
- ~~(b) concluded by means of automatic vending machines or automated commercial premises;~~
- ~~(c) concluded with telecommunications operators through public payphones for their use;~~
- ~~(d) for the supply of foodstuffs or beverages by a trader on frequent and regular rounds in the neighbourhood of his business premises.~~

- ~~2. Articles 8 to 19 shall not apply to off-premises contracts relating to:~~
- ~~(a) insurance,~~
  - ~~(b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC<sup>1</sup> and~~
  - ~~(c) credit which falls within the scope of Directive 2008/48/EC.~~
- ~~3. Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.~~

## Chapter IV

### Other consumer rights specific to sales contracts

#### Article 21 Scope

4. This Chapter shall apply to sales contracts. ~~Without prejudice to Article 24(5), where the contract is a mixed-purpose contract having as its object both goods and services, this Chapter shall only apply to the goods.~~ ***Sales contracts within the meaning of this Directive shall also include***
- ~~2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.~~
- ~~3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.~~
4. ~~Member States may decide not to apply this~~ ***This Chapter shall not apply to the sale of second-hand goods sold at public auctions.***

#### Article 22 Supplies

1. Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier and indicated by the consumer, within a maximum of thirty days from the day of the conclusion of the contract.
2. Where the trader has failed to fulfil his obligations to deliver, the consumer ***may call upon him, on a durable medium, to make the delivery within a period appropriate to***

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<sup>1</sup> OJ L 271, 9.10.2002, p. 16.

*the circumstances, which may not be less than seven days, and notify him of his intention to withdraw from the contract if delivery does not take place. If, upon expiry of that period, no action has been taken, it shall be assumed that the consumer has withdrawn from the sales contract. A consumer who has already paid the price shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1 day on which he withdrew from the contract. This shall be without prejudice to the rights of the consumer to claim damages.*

- 2a. If the trader fails to deliver within the appropriate period referred to in paragraph 2, Member States may adopt or maintain provisions of national law providing for other remedies for the consumer.*

#### Article 23 Passing of risk

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, other than the carrier and indicated by the consumer has acquired the material possession of the goods.
2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated by the consumer has failed to take reasonable steps to acquire the material possession of the goods.

#### Article 24 Conformity with the contract

1. The trader shall **be obliged to** deliver the goods **to the consumer** in conformity with the sales contract.
2. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:
  - (a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;
  - (b) they are fit for any particular purpose for which the consumer requires them and which he made known to the trader at the time of the conclusion of the contract and which the trader has accepted;
  - (c) they are fit for the purposes for which goods of the same type are normally used or
  - (d) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.

3. There shall be no lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or should reasonably have been aware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.
4. The trader shall not be bound by public statements, as referred to in paragraph 2(d) if he shows that one of the following situations existed:
  - (a) he was not, and could not reasonably have been, aware of the statement in question;
  - (b) by the time of conclusion of the contract the statement had been corrected;
  - (c) the decision to buy the goods could not have been influenced by the statement.
5. Any lack of conformity resulting from the incorrect installation of the goods shall be ~~considered as~~ **equivalent to** a lack of conformity of the goods where the installation forms part of the sales contract and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

#### Article 25

#### Legal rights – Liability for lack of conformity

The trader shall be liable to the consumer for any lack of conformity which exists at the time the risk passes to the consumer.

#### Article 26

#### Remedies for lack of conformity

1. ~~As provided for in paragraphs 2 to 5, where the goods do not conform to the contract,~~ **Where there is lack of conformity, the consumer is *shall be* entitled *either* to:**
  - (a) ~~have the lack of conformity~~ **of the goods remedied by repair or replacement *in accordance with paragraphs 2, 3 and 5, or to***
  - (b) ~~have the price reduced~~ ***appropriately or the sales contract rescinded in accordance with paragraphs 4, 5 and 5a.***
  - (c) ~~have the contract rescinded.~~
2. ~~The *consumer in the first place* trader shall remedy the lack of conformity *may insist* by either *on* repair or replacement *by the trader, provided that this is neither impossible nor disproportionate* according to his choice.~~
3. ***Either of the remedies referred to in paragraph 2 shall be considered disproportionate if it causes the trader costs which*** ~~Where the trader has proved that remedying the lack of conformity by repair or replacement is unlawful, impossible or would cause the trader a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it imposes costs on him which,~~

~~in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods if there was no lack of conformity and the significance of the lack of conformity.~~

- ~~(a) in the light of what would be the value of the goods if there were no lack of conformity,~~
- ~~(b) taking into account the significance of the lack of conformity,~~
- ~~(c) upon consideration of the question as to whether use could be made of other remedies (repair or replacement) without significance inconvenience for the consumer,~~

~~would be unreasonable by comparison with the alternative remedy (repair or replacement).~~

~~Repair or replacement shall take place within a reasonable time and without significant inconvenience for the consumer. The consumer may only rescind the contract if the lack of conformity is not minor.~~

4. ~~Without prejudice to paragraph 5b, The~~ *the* consumer may *insist on a reasonable reduction in price or rescission of the contract* ~~resort to any remedy available under paragraph 1,~~ where one of the following situations exists:
  - ~~(a) the consumer is not entitled to have the goods either repaired or replaced~~ *trader has implicitly or explicitly refused to remedy the lack of conformity;*
  - (b) the trader has failed to remedy the lack of conformity within a reasonable time;
  - (c) the trader has ~~tried to remedy~~ *remedied* the lack of conformity, causing significant inconvenience to the consumer;
  - ~~(d) the same defect has reappeared more than once within a short period of time.~~
5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ~~or~~ *and* the purpose for which the consumer ~~acquired~~ *requires* the goods as ~~provided for by~~ *within the meaning of* Article 24(2)(b).
  - 5a. *The consumer shall not be entitled to have the sales contract rescinded if the lack of conformity is minor.*
  - 5b. *Member States may adopt or maintain provisions of national law giving consumers, in the event of lack of conformity, a free choice from among the remedies referred to in paragraph 1, in order to ensure a higher level of protection for consumers. These measures must be essential in order to protect consumers appropriately, and must be proportionate and effective.*

Article 27  
Costs and damages

1. The consumer shall be entitled to have the lack of conformity remedied free of any cost.
  - 1a. The consumer shall also be refunded by the trader, to a reasonable extent, the cost of remedying the lack of conformity himself.*
2. Without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

*Article 27a  
Right of recourse*

*Where the trader, as final seller, is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the trader, as final seller, may pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the trader, as final seller, may pursue remedies, together with the relevant actions and procedure, shall be determined by national law.*

Article 28  
Time limits and burden of proof

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.
- ~~2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the material possession of the replaced goods.~~
3. In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.
- ~~4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.~~
5. Unless proved otherwise, any lack of conformity which becomes apparent within six months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.
- 5a. Member States may adopt or maintain provisions of national providing for a longer liability period, a longer period for reversal of the burden of proof in the consumer's favour or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of protection for the consumer. These measures must be essential in order to protect consumers appropriately, and must be proportionate and effective.*

Article 29  
Commercial guarantees

1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of the guarantee statement, the commercial guarantee shall be binding under the conditions laid down in the advertising on the commercial guarantee.
2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall include the following:
  - (a) legal rights of the consumer ***under the applicable provisions of national law***, as provided for in Article 26, and a clear statement that those rights are not affected by the commercial guarantee,
  - (b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,
  - (c) ~~without prejudice to Articles 32 and 35 and Annex III(1)(j),~~ set out, where applicable, that the commercial guarantee cannot be transferred to a subsequent buyer.
3. If the consumer so requests, the trader shall make the guarantee statement available in a durable medium.
4. Non compliance with paragraph 2 or 3 shall not affect the validity of the guarantee.

**Chapter V**

**Consumer rights concerning contract terms**

Article 30  
Scope

1. This Chapter shall apply to contract terms ***in contracts between traders and consumers which have not been individually negotiated. A contract term shall always be regarded as not individually negotiated where it has been*** drafted in advance ~~by the trader or a third party, which~~ ***and the consumer has therefore not been able to influence the substance of the term, particularly in the context*** ~~agreed to without having the possibility of influencing their content, in particular where such contract terms are part of a pre-formulated standard contract.~~
2. The fact that ~~the consumer had the possibility of influencing the content of certain aspects of a contract term or one specific term~~ ***have been individually negotiated***, shall not exclude the application of this Chapter to ~~other~~ ***the rest of the contract, terms which form part of the provided that, overall, it is considered a pre-formulated standard contract.***

3. This Chapter shall not apply to contract terms ~~reflecting mandatory~~ **based on binding** statutory or regulatory provisions, ~~which comply with Community law and~~ **or on** the provisions or principles of international conventions to which the ~~Community or the~~ Member States **or the Union** are party.

#### Article 31

##### Transparency requirements of contract terms

1. Contract terms shall be ~~expressed~~ **written** in plain, intelligible language and be legible.
5. Contract terms shall be made available to the consumer in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract, with due regard to the means of communication used.
6. The trader shall seek the express consent of the consumer to any payment in addition to the remuneration foreseen for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.
7. Member States shall refrain from imposing any presentational requirements as to the way the contract terms **in a distance or off-premises contract** are expressed or made available to the consumer.

#### Article 32

##### General principles

1. ~~Where a A contract term is not included in Annex II or III, Member States shall ensure that it is~~ **be** regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the **goods or services** ~~products~~ for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. 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 in accordance with Article 31.
3. ~~Paragraphs 1 and 2 shall not apply to the~~ **The** assessment of **the fairness of contract terms shall concern neither** the main subject matter of the contract ~~or~~ **nor** to the adequacy of the **price of the goods or remuneration for the services in question,** ~~foreseen for the trader's main contractual obligation,~~ provided that the trader fully complies with Article 31(1), (2) and (3).

Article 33  
Burden of proof

Where the trader claims that a *standard*-contract term has been individually negotiated, the burden of proof shall be incumbent on him.

Article 34  
Terms considered unfair in all circumstances

- I.* Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~
- 1a.* ***Member States may adopt or maintain provisions identifying other contract terms as unfair in all circumstances. Those provisions must be essential in order to protect consumers appropriately, and must be proportionate and effective.***

Article 35  
Terms presumed to be unfair

- I.* Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~
- 1a.* ***Member States may adopt or maintain provisions designating additional terms as terms presumed to be unfair. Those provisions must be essential in order to protect consumers appropriately, and must be proportionate and effective.***

Article 36  
Interpretation of terms

1. Where there is doubt about the meaning of a *contract* term, the interpretation most favourable to the consumer shall prevail.
2. This Article shall not apply in the context of the procedures laid down in Article 38(2).

Article 37  
Effects of unfair contract terms

Contract terms which are unfair shall not be binding on the consumer. The contract shall continue to bind the parties *on the same basis* if it can remain in force without the unfair terms.

Article 38  
Enforcement in relation to unfair contract terms

1. Member States shall ensure that, in the interests of consumers and of ~~competitors~~ **traders**, adequate and effective means exist to ~~prevent~~ **end** the ~~continued~~ use of unfair terms in contracts concluded **by traders** with consumers ~~by sellers or suppliers~~.
2. **The means referred to in paragraph 1 shall also include legislation and** ~~In particular,~~ persons or organisations; having a legitimate interest under national law in protecting consumers; ~~may take~~ **and capable of taking** action before the courts or **competent** administrative authorities, **in compliance with provisions of national law**, ~~for a decision~~ **as to so that they can decide** whether contract terms drawn up for general use are unfair **and deploy effective means to end the use of such terms**.
- ~~3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from continuing to use terms which have been found unfair.~~
4. **The means referred to in paragraph 2 may be deployed** ~~Member States shall ensure that the legal actions referred to in paragraph 2 and 3 may be directed either separately or jointly depending on national procedural laws against a number of traders from the same economic sector or their associations which use or recommend the use of the same general contract terms or similar terms.~~

*Article 39*  
*Review of the terms in Annexes 2 and 3*

- ~~1. Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.~~
- ~~2. In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2)~~

## Chapter VI

### General requirements

*Article 40*  
*Committee*

- ~~1. The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as "the Committee").~~

~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC<sup>+</sup> shall apply, having regard to the provisions of Article 8 thereof.~~

#### Article 41 Enforcement

1. Enforcement 1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
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 organisations having a legitimate interest in protecting consumers;
  - (c) professional organisations having a legitimate interest in acting.

#### Article 42 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
2. Member States shall notify those provisions to the Commission by the date specified in Article 46 at the latest and shall notify it without delay of any subsequent amendment affecting them.

#### Article 43 Imperative nature of the Directive

If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by this Directive.

#### Article 44 Information

Information Member States shall take appropriate measures to inform consumers of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

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<sup>+</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 45  
Inertia selling

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of a product as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Article 46  
Implementation

1. Member States shall adopt and publish, by [eighteen months after its entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [two years after its entry into force].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

2. ~~Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

Article 46a  
Reporting requirement and mutual evaluation

1. ***By [the end of the transposition period], and every three years thereafter, Member States shall draw up a report containing the following information:***
  - (a) the text of any additional information requirements which Member States adopt or maintain pursuant to Article 5(3)(b) and (c);***
  - (b) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 22(2a);***
  - (c) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 26(5b) and Article 28(5a);***
  - (d) the text of any additional contract terms designated by Member States, pursuant to Article 34(1a), as unfair in all circumstances;***
  - (e) the text of any additional contract terms designated by Member States, pursuant to Article 35(1a), as terms presumed to be unfair;***
  - (f) the text of any decisions of fundamental importance – together with the grounds for them – taken by Member States' courts, arbitration bodies or competent administrative authorities in the field covered by this Directive.***

2. *With regard to the information referred to in paragraph 1(a), (b), (c), (d) and (e), Member States shall detail why diverging provisions of national law are essential in order to protect consumers appropriately and in what way they are proportionate and effective. Commercial practicability and the furnishing of evidence, from a practical and legal point of view, in successfully concluded court proceedings shall be the sole criterion for assessing the consumer protection effectiveness of diverging provisions of national law.*
3. *The Commission shall ensure that the details referred to in paragraph 1(d) and (e) are easily accessible to consumers and traders, e.g. on a website.*
4. *The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult interested parties on those reports.*

#### **Article 46b**

##### **Reporting by consumer protection agents**

*Persons or organisations having a legitimate interest under national law in protecting consumers, within the meaning of Article 38(2), shall notify the Commission of the conclusions they have reached from the assessment of the application and impact of this Directive.*

#### **Article 46c**

##### **Commission report**

*By [one year after transposition], and every three years thereafter, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, taking account of the opinions referred to in Article 46a(4) and Article 46b. If necessary, it shall make proposals, accompanying the report, to adapt the Directive to developments in the area.*

### **Chapter VII Final provisions**

#### **Article 47**

##### **Repeal**

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

*Article 48*  
*Review*

~~The Commission shall review this Directive and report to the European Parliament and the Council no later than [insert same date as in the second subparagraph of Article 46(1) + five years].~~

~~If necessary, it shall make proposals to adapt it to developments in the area. The Commission may request information from the Member States.~~

Article 49  
Entry into force

This Directive shall enter into force on the on the 20th day following its publication in the Official Journal of the European Union.

Article 50  
Addresses

This Directive is addressed to the Member States.

*Done at Brussels,*

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**  
**INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF**  
**WITHDRAWAL**

**A. Model instructions on withdrawal**

***Right of withdrawal***

*You may withdraw from this contract within a period of 14 days without giving any reason. The period for withdrawal shall begin [on receipt of the goods ordered] <sup>1</sup>. The day [on which the goods are received] <sup>2</sup> shall not be counted as part of the period for withdrawal. If the last day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

*The period for withdrawal shall be deemed to have been observed if notice of withdrawal is sent before its expiry.*

*Notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter) <sup>3</sup> to: <sup>4</sup>. You may use the model withdrawal form below, although you are not required to do so.*

***Effects of withdrawal***

*For withdrawal to be valid you must send the goods back, at [our expense] <sup>5</sup>, within a period of 14 days of sending your notice of withdrawal. The day on which you send the notice of withdrawal shall not be counted as part of the period for return of the goods. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

*If you are unable to return the goods in their original condition, you shall be liable for any deterioration in their value. This provision shall apply only if the deterioration in value is attributable to the goods having been handled in a manner other than that necessary for ascertaining their nature. You can prevent deterioration by refraining from using the goods as you would your own property and by avoiding any form of handling liable to reduce their value.*

*In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

*We may refuse to reimburse you until we have [received the returned goods or until you have produced proof of sending the goods back, whichever is the earlier] <sup>6</sup>.*

***Advice on alternative wording:***

- <sup>1</sup> *In the following specific cases, the text in parentheses should read as indicated:*
- (a) *in the case of a distance contract for the provision of services: 'with the conclusion of the contract';*
  - (b) *in the case of an off-premises contract for the provision of services: 'when you receive a copy of the signed contract document on a durable medium (e.g. on paper)';*
- <sup>2</sup> *In the following specific cases, the text in parentheses should read as indicated:*
- (a) *in the case of a distance contract for the provision of services: 'on which the contract is concluded';*

(b) *in the case of an off-premises contract for the provision of services: 'on which you receive a copy of the signed contract document'.*

3 *In the case of distance contracts, additional text should be inserted as follows:*

(a) *if the trader allows the consumer to withdraw from the contract by e-mail: 'or by e-mail';*

(b) *if the trader allows the consumer to fill in a model form electronically on a website: 'or via our website'.*

4 *To be inserted: the trader's name and business address. In the case of distance contracts, the following must also be indicated: the e-mail and/or web address of the trader which the consumer can use to withdraw from the contract.*

5 *If the price of the goods to be returned is not more than EUR 50, the text in parentheses should read as follows: 'your own expense'.*

6 *If the trader offers to collect the goods from the consumer, the text in parentheses should read as follows: 'collected the goods from you'.*

#### **A. Information to be provided with the withdrawal form**

1. ~~The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.~~

2. ~~A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:~~

~~(a) for off premises contracts, within a period of fourteen days following his signature of the order form;~~

~~(b) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;~~

~~(c) for distance service contracts:~~

~~— within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen day period;~~

~~— within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.~~

8. ~~For all sales contracts, a statement informing the consumer about the time limits and modalities to send back the goods to the trader and the conditions for the reimbursement in accordance with Articles 16 and 17(2).~~

9. ~~For distance contracts concluded on the Internet, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.~~

10. — A statement that the consumer can use the withdrawal form set out in Part B.

### **B. Model withdrawal form**

(Complete and return this form only if you wish to withdraw from the contract.)

- To: (*trader's name, business address and, where appropriate, e-mail address*)(\*)
- *I/We (\*\*)* hereby give notice that *I/we withdraw from my/our contract with you.*  
~~I/We\* hereby give notice that I/We\* withdraw from my/our\* contract of sale of the following goods\*/provision of the following service\*~~
- Ordered on\*/received on\*(\*\*\*):
- Name(s) of consumer(s) (\*\*\*):
- Address(es) of consumer(s) (\*\*\*):
- Consumer(s)' signature(s) (required only if the form is *sent on paper notified in writing*) (\*\*\*):
- Date (\*\*\*):

(\*) *Text to be supplied by the trader before the form is given to the consumer to fill in.*

(\*\*) \*Delete as appropriate.

(\*\*\*) *To be filled in by the consumer(s) if this form is used for withdrawal from the contract.*

## ANNEX II

### CONTRACT TERMS WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

Contract terms, which have the object or effect of the following, shall be unfair in all circumstances:

- (a) excluding or limiting the *statutory* liability of the trader ~~for death or personal injury caused to~~ *where the consumer dies or is physically injured through as a result of* an act or omission of that trader;
- (aa) *excluding or limiting the statutory liability of the trader where the consumer's property is damaged as a result of for death or personal injury caused to the consumer as a result of an intentional or grossly negligent act or omission of that trader;*
- (ab) *making the period for termination of an open-ended contract by the trader shorter than that set for the consumer;*
- (b) limiting the trader's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular *formal requirement* ~~condition which depends exclusively on the trader;~~
- (c) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, *restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with the other party to the contract;*.
- (ca) *assigning exclusive jurisdiction in all disputes under a contract to the competent court where the trader is resident, unless that court is the competent court where the consumer is resident, too;*
- (cb) *enabling the trader, at his own discretion, to set the prices of goods and services which should be set after conclusion of the contract;*
- ~~(d) restricting the evidence available to the consumer or imposing on him a burden of proof which, according to the applicable law, should lie with the trader;~~
- (e) giving the trader the right to determine whether the goods or services supplied are in conformity with the contract or giving the trader the exclusive right to interpret any term of the contract;
- (f) *enabling the trader to terminate or modify the contract because of the introduction of the euro.*

## ANNEX III

### CONTRACT TERMS WHICH ARE PRESUMED TO BE UNFAIR

1. Contract terms, which have the object or effect of the following, are presumed to be unfair:
  - (a) excluding or **unduly** limiting the legal rights of the consumer vis-à-vis the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer of offsetting a debt owed to the trader against a claim which the consumer may have against him;
  - (b) allowing the trader to retain a payment **amounts paid** by the consumer where the ~~latter~~ **consumer** fails to conclude or perform the contract, ~~without giving~~ **with** the consumer ~~the~~ **having no** right to be compensated of the same amount **corresponding compensation** if the trader fails to conclude or perform the contract;
  - (c) requiring any consumer who fails to fulfil his ~~obligation~~ **obligations** to pay **disproportionately high** damages ~~which significantly exceed the harm suffered by~~ **to** the trader;
  - (d) allowing the trader to terminate the contract **at his own discretion** where the same right is not granted to the consumer, **and allowing the trader, where he himself terminates the contract, to retain amounts paid for services not yet provided by him**;
  - (e) ~~enabling~~ **allowing** the trader to terminate an open-ended contract without reasonable notice except where ~~the consumer has committed a~~ **there are** serious breach of contract **grounds for doing so**;
  - (f) automatically renewing a fixed-term contract where the consumer ~~does~~ **has** not indicate otherwise **made a statement to the contrary** and has to give a long notice **the point in time when the consumer must state that he does not wish to terminate** **renew** the contract at the end of each renewal period **is unduly far ahead in the future**;
  - (g) ~~allowing~~ **enabling** the trader to increase the price - **without the consumer being entitled to withdraw from the contract - if the final price, in relation to the** price agreed ~~with the consumer~~ when the contract was concluded, **is too high** ~~without giving the consumer the right to terminate the contract~~;
  - (h) obliging the consumer to fulfil all his obligations where the trader ~~has failed~~ **fails** to fulfil all his obligations;
  - (i) giving the trader the possibility of transferring his obligations under the contract, without the consumer's agreement, **if it possibly reduces guarantees for the consumer**;
  - (j) ~~restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the trader~~;

- (k) enabling the trader to unilaterally alter the terms of the contract, including the characteristics of the product or service, ***without a valid reason which is specified in the contract***;
  - (ka) ***enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided***;
  - ~~(l) unilaterally amending contract terms communicated to the consumer in a durable medium through on-line contract terms which have not been agreed by the consumer.~~
  - (la) ***making an agreement binding on the consumer whereas provision of services by the trader is subject to a condition whose realisation depends on his own will alone***;
  - (lb) ***irrefutably presuming the agreement of the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract***;
2. Point 1(e) shall not apply to ***preclude*** terms by which a supplier of financial service ***services*** reserves the right to terminate ~~unilaterally~~ an open-ended contract ***unilaterally and - where there is a valid reason -*** without notice, provided that the ~~supplier~~ ***trader*** is required to inform the other contracting party or parties thereof immediately.
3. ~~Point~~ ***Points 1(e), (g) and (ka)*** shall not apply to
- (a) transactions in transferable securities, financial instruments and other ~~products~~ ***goods*** or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
  - (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
  - ~~(c) price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.~~
- 3a. ***Point 1(g) shall not preclude price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.***
4. Point 1(k) shall not apply to ***preclude terms under which***
- (a) ~~terms under which~~ a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;
  - ~~(b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;~~

~~(c) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;~~

(d) ~~terms under which~~ the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.

ANNEX IV  
Repealed Directives with the list of its successive amendments  
(as referred to in Article 47)

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises	OJ L 372, 31.12.1985, p. 31.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	OJ L 95, 21.4.1993, p. 29.
Directive 97/7/EC of the European Parliament and of the Council	OJ L 144, 4.6.1997, p. 19.
Directive 2002/65/EC of the European Parliament and of the Council	OJ L 271 of 09.10.02, p. 16.
Directive 2005/29/EC of the European Parliament and of the Council	OJ L 149 of 11.06.05, p. 29.
Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007	OJ L 319 of 05.12.07, p. 1.
Directive 1999/44/EC of the European Parliament and of the Council	OJ L 171, 7.7.1999, p. 12.

ANNEX V  
CORRELATION TABLE

*(To be inserted later)*