

DISTANCE SELLING DIRECTIVE, DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object

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

Article 2

Definitions

For the purposes of this Directive:

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

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

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

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

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

- concluded with telecommunications operators through the use of public payphones,
 - concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental,
 - concluded at an auction.
2. Articles 4, 5, 6 and 7 (1) shall not apply:
- to contracts for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen,
 - to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period; exceptionally, in the case of outdoor leisure events, the supplier can reserve the right not to apply Article 7 (2) in specific circumstances.

Article 4

Prior information

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

- (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- (b) the main characteristics of the goods or services;
- (c) the price of the goods or services including all taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic

rate;

- (h) the period for which the offer or the price remains valid;

(i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

3. Moreover, in the case of telephone communications, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

Article 5

Written confirmation of information

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

In any event the following must be provided:

- written information on the conditions and procedures for exercising the right of withdrawal, within the meaning of Article 6, including the cases referred to in the first indent of Article 6 (3),
- the geographical address of the place of business of the supplier to which the consumer may address any complaints,
- information on after-sales services and guarantees which exist,
- the conclusion for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

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

Article 6

Right of withdrawal

1. For any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods.

The period for exercise of this right shall begin:

- in the case of goods, from the day of receipt by the consumer where the obligations laid down in Article 5 have been fulfilled,

- in the case of services, from the day of conclusion of the contract or from the day on which the obligations laid down in Article 5 were fulfilled if they are fulfilled after conclusion of the contract, provided that this period does not exceed the three-month period referred to in the following subparagraph.

If the supplier has failed to fulfil the obligations laid down in Article 5, the period shall be three months. The period shall begin:

- in the case of goods, from the day of receipt by the consumer,

- in the case of services, from the day of conclusion of the contract.

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

2. Where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. Such reimbursement must be carried out as soon as possible and in any case within 30 days.

3. Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraph 1 in respect of contracts:

- for the provision of services if performance has begun, with the consumer's agreement, before the end of the seven working day period referred to in paragraph 1,

- for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier,

- for the supply of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,

- for the supply of audio or video recordings or computer software which were unsealed by the consumer,

- for the supply of newspapers, periodicals and magazines,

- for gaming and lottery services.

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

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

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

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

Article 7

Performance

1. Unless the parties have agreed otherwise, the supplier must execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order to the supplier.

2. Where a supplier fails to perform his side of the contract on the grounds that the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund of any sums he has paid as soon as possible and in any case within 30 days.

3. Nevertheless, Member States may lay down that the supplier may provide the consumer with goods or services of equivalent quality and price provided that this possibility was provided for prior to the conclusion of the contract or in the contract. The consumer shall be informed of this possibility in a clear and comprehensible manner. The cost of returning the goods following exercise of the right of withdrawal shall, in this case, be borne by the supplier, and the consumer must be informed of this. In such cases the supply of goods or services may not be deemed to constitute inertia selling within the meaning of Article 9.

Article 8

Payment by card

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

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

Article 9

Inertia selling

Member States shall take the measures necessary to:

- prohibit the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment,
- exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

Article 10

Restrictions on the use of certain means of distance communication

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

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

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

Article 11

Judicial or administrative redress

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

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

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

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

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

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

Article 12

Binding nature

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

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

Article 13

Community rules

1. The provisions of this Directive shall apply insofar as there are no particular provisions in rules of Community law governing certain types of distance contracts in their entirety.

2. Where specific Community rules contain provisions governing only certain aspects of the supply of goods or provision of services, those provisions, rather than the provisions of this Directive, shall apply to these specific aspects of the distance contracts.

Article 14

Minimal clause

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

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Done at Brussels, 20 May 1997.