

# Consumer rights

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

The general approach contains the following features:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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