

Consumer rights

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

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

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

The main amendments were as follows:

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

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

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

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

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

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

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

However, a withdrawal right should only apply until the moment the consumer chooses to download the digital content.

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

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

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

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

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

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

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

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

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

Delivery: if the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible but in any event not later than **thirty days** from the day of the conclusion of the contract. Members state that the main difficulties encountered by consumers and the main source of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore the text harmonises the national rules on delivery and passing of risk. Where

the trader has failed to fulfil his obligations to deliver the goods at the time agreed on with the consumer, the consumer shall be entitled to terminate the contract unless the goods are delivered within a new period to be determined by the consumer, which shall not exceed seven days. To that end, the consumer shall give prior notice **in writing** to the trader, specifying the new delivery period and stating his intention to terminate the contract in the event that the delivery does not take place by the end of that new delivery period. If, upon expiry of that period, no action has been taken, the consumer shall be deemed to have withdrawn from the contract.

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

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

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

Remedy where there is lack of conformity: Parliament proposes **hierarchy of remedies**, although Member States would retain the option of taking alternative measures, should they be both necessary and consistent with the principles of proportionality and effectiveness. Consumers would first be entitled to have the lack of conformity of the goods remedied by repair or replacement. Secondly, they would be entitled to have the price reduced appropriately or the sales contract rescinded. The consumer may insist on a reasonable reduction in price or rescission of the contract, where one of the following situations exists: (i) the consumer is entitled neither to repair nor replacement; (ii) the trader has refused explicitly or by his conduct to remedy the lack of conformity.

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

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

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