

Consumer rights

2008/0196(COD) - 25/10/2011 - Final act

PURPOSE: to approximate certain aspects of Member States' laws concerning contracts concluded between consumers and traders.

LEGISLATIVE ACT: Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

CONTENT: following an agreement at first reading with the European Parliament, the Council adopted this Directive aimed at increasing the consumer protection across the European Union. The Directive fully harmonises the list of information to be given to consumers and the right of withdrawal for distance and off-premises purchases. Subject to certain exceptions, 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. For that purpose, he may make use of a standard withdrawal form that he will receive from the trader.

In the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during the withdrawal period after the conclusion of the contract.

In addition, the Directive provides for the list of minimal information the consumer shall receive when buying on-premises. Member States will be able to add supplementary information requirements depending on national circumstances.

The main points are as follows:

Purpose: to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of Member States concerning contracts concluded between consumers and traders.

Scope: the Directive shall apply to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

Exceptions: exemptions from the scope are listed in the Directive and include contracts for social services, healthcare, gambling, financial services, contracts relating to immovable property, package holidays, timeshares, the supply of foodstuffs, and beverages, and passenger transport services.

In addition, Member States may decide not to apply the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. They may define a lower value in their national legislation.

Information requirements: the Directive sets out minimum information requirements that the trader must provide the consumer both for contracts other than distance or off-premises contracts and for distance and off-premises contracts. With regard to distance and off-premises contracts, the information to be provided includes the following:

-

the identity, the address, the telephone number of the trader as well as his fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently;

- the total price inclusive of taxes;
- the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- the arrangements for payment, delivery, performance,;
- the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right;
- where applicable, that the consumer will have to bear the cost of the return of the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- 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, where applicable;
- the functionality, including applicable technical protection measures, of digital content, where applicable;
- where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

With regard to the right of withdrawal, the information may be provided by means of the Model instructions on withdrawal set out in Annex I(A). As regards compliance with the information requirements, the burden of proof shall be upon the trader.

Formal requirements: the Directive lists the formal requirements for distance contracts and for off-premises contracts.

Off-premises contracts: the information shall be legible and in plain, intelligible language. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on a different durable medium, including, where applicable, the confirmation of the consumer's consent and acknowledgement.

Distance contracts: the information provided for shall be given to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language and, insofar as it is provided on a durable medium, it shall be legible. If a distance contract to be concluded by electronic means places the consumer under an obligation to make a payment, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in the text.

The trader shall ensure that the consumer, when placing his order, explicitly confirms that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with duty of payment' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to make a payment to the trader. If this subparagraph is not complied with, the consumer shall not be bound by the contract or order.

Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

Right of withdrawal: subject to exceptions referred to in the text, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without

incurring any costs other than those provided for in the text. . The withdrawal period shall expire after 14 days from, the day of the conclusion of the contract in the case of service contracts and the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods in the case of sales contracts.

Omission of information on right of withdrawal: if the trader has not provided the consumer with the information on the right of withdrawal, the withdrawal period shall expire 12 months from the end of the initial withdrawal period. If the trader has provided the consumer with the information provided for, the withdrawal period shall expire 14 days upon which the day where the consumer receives that information.

The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw.

Obligations of the trader in the event of withdrawal: the trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract.

Obligations of the consumer in the event of withdrawal: unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader. The deadline shall be met if the consumer sends back the goods before the period of 14 days has expired.

Exceptions from the right of withdrawal: these include: (i) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery; (ii) contracts for which the consumer has specifically requested the trader to visit him for the purpose of carrying out urgent repairs or maintenance; (iii) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications; (iv) contracts concluded at a public auction; (v) the provision of accommodation other than for residential purpose, transport of goods , car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance; (vi) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he hereby loses his right of withdrawal .

Delivery: the trader will in principle deliver the goods to the consumer as soon as possible and not later than 30 days from the conclusion of the contract. If the trader has failed to deliver and subject to specific conditions, the consumer will be entitled to terminate the contract and the trader will reimburse all sums paid under the contract.

Fees for the use of payment means: traders are prohibited from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

Additional payments: before the consumer is bound, the trader will seek the express consent of the consumer to such payment. If the trader has not obtained the express consent, the consumer will be entitled to reimbursement of the payment.

Passing of risk: in contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. The risk shall pass to the

consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

On communication by phone: where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate. This is without prejudice to the right of telecommunication services providers to charge for such calls.

Reporting by the Commission and review: the Commission shall submit a report on the application of this Directive by 13 December 2016, including in particular an evaluation of the provisions of the Directive regarding digital content including the right of withdrawal, and accompanied, where necessary, by legislative proposals to adapt the Directive to developments in the field of consumer rights.

ENTRY INTO FORCE: 12 December 2011.

TRANSPOSITION: 13 December 2013.

APPLICATION: 13 June 2014.