

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	1992/0411(COD) Procedure completed
Protection of consumers: distance contracts	
Amended by 1998/0245(COD) Amended by 2003/0134(COD) Amended by 2005/0245(COD) Repealed by 2008/0196(COD)	
Subject 4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Former committee responsible		
	ENVI Environment, Public Health and Consumer Protection	PPE OOMEN-RUIJTEN Ria	27/07/1994
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	1985	20/01/1997
	Agriculture and Fisheries	1904	26/02/1996
	Social Affairs	1862	29/06/1995
	Consumers	1838	30/03/1995

Key events			
15/05/1992	Additional information		Summary
20/05/1992	Legislative proposal published	COM(1992)0011	Summary
10/07/1992	Committee referral announced in Parliament, 1st reading		
07/05/1993	Vote in committee, 1st reading		Summary
07/05/1993	Committee report tabled for plenary, 1st reading	A3-0159/1993	
25/05/1993	Debate in Parliament		Summary
26/05/1993	Decision by Parliament, 1st reading	T3-0321/1993	Summary
07/10/1993	Modified legislative proposal published	COM(1993)0396	Summary
24/11/1993	Vote in committee, 1st reading		
24/11/1993	Committee report tabled for plenary	A3-0365/1993	

	confirming Parliament's position		
02/12/1993	Decision by Parliament, 1st reading	T3-0683/1993	Summary
29/06/1995	Council position published	07623/2/1995	Summary
21/09/1995	Committee referral announced in Parliament, 2nd reading		
21/11/1995	Vote in committee, 2nd reading		Summary
21/11/1995	Committee recommendation tabled for plenary, 2nd reading	A4-0297/1995	
11/12/1995	Debate in Parliament		Summary
13/12/1995	Decision by Parliament, 2nd reading	T4-0601/1995	Summary
26/02/1996	Parliament's amendments rejected by Council		Summary
01/10/1996	Formal meeting of Conciliation Committee		
27/11/1996	Final decision by Conciliation Committee		
27/11/1996	Joint text approved by Conciliation Committee co-chairs	3636/1996	
13/01/1997	Report tabled for plenary, 3rd reading	A4-0009/1997	
15/01/1997	Debate in Parliament		Summary
16/01/1997	Decision by Parliament, 3rd reading	T4-0008/1997	Summary
23/01/1997	Decision by Council, 3rd reading		
20/05/1997	Final act signed		
20/05/1997	End of procedure in Parliament		
04/06/1997	Final act published in Official Journal		

Technical information

Procedure reference	1992/0411(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 1998/0245(COD) Amended by 2003/0134(COD) Amended by 2005/0245(COD) Repealed by 2008/0196(COD)
Legal basis	EC before Amsterdam E 100A
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/07644

Documentation gateway

--	--	--	--	--	--

Legislative proposal	COM(1992)0011 OJ C 156 23.06.1992, p. 0014	20/05/1992	EC	Summary
Economic and Social Committee: opinion, report	CES1339/1992 OJ C 019 25.01.1993, p. 0111	25/11/1992	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	A3-0159/1993 OJ C 176 28.06.1993, p. 0005	07/05/1993	EP	
Text adopted by Parliament, 1st reading/single reading	T3-0321/1993 OJ C 176 28.06.1993, p. 0053-0085	26/05/1993	EP	Summary
Modified legislative proposal	COM(1993)0396 OJ C 308 15.11.1993, p. 0018	07/10/1993	EC	Summary
Reconsultation	COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading	A3-0365/1993 OJ C 342 20.12.1993, p. 0003	24/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading	T3-0683/1993 OJ C 342 20.12.1993, p. 0015-0033	02/12/1993	EP	Summary
Council position	07623/2/1995 OJ C 288 30.10.1995, p. 0001	29/06/1995	CSL	Summary
Commission communication on Council's position	SEC(1995)1158	18/09/1995	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	A4-0297/1995 OJ C 339 18.12.1995, p. 0005	21/11/1995	EP	
Text adopted by Parliament, 2nd reading	T4-0601/1995 OJ C 017 22.01.1996, p. 0036-0051	13/12/1995	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1996)0036	07/02/1996	EC	Summary
Joint text approved by Conciliation Committee co-chairs	3636/1996	27/11/1996	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	A4-0009/1997 OJ C 033 03.02.1997, p. 0023	13/01/1997	EP	
Text adopted by Parliament, 3rd reading	T4-0008/1997 OJ C 033 03.02.1997, p. 0058-0076	16/01/1997	EP	Summary
Follow-up document	COM(2006)0514	21/09/2006	EC	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 1997/7](#)
[OJ L 144 04.06.1997, p. 0019](#) Summary

Protection of consumers: distance contracts

Protection of consumers: distance contracts

PURPOSE: the approximation of Member States' legislation concerning contracts negotiated at a distance

PROPOSED ACT: Directive of the European Parliament and of the Council

CONTENT: This proposal seeks:

- to harmonise Member States' legislation concerning the negotiation of contracts at a distance between consumers and suppliers, as well as contract solicitation and other preparatory actions; and
- to establish a minimum basis of protection for consumers for what concerns contracts negotiated at a distance.

The proposal covers the distance selling of contracts for all goods and services. However, provisions are made for certain exceptions. These include, in particular:

- an obligation for the supplier to provide certain information to the consumer. Some of this information must be provided at the time when the consumer is solicited, while other information must be provided at the point in time when the contract is concluded.
- the possibility for the consumer to cancel a credit card operation carried out at a distance if there are reasons to question the validity of the operation.

Protection of consumers: distance contracts

\$summary.text

Protection of consumers: distance contracts

The report by Mrs Oomen-Ruijten (PPE, NL) adopted by the Committee on the Environment, Public Health and Consumer Protection, amended the Commission's proposal as regards the key question of the consumer's right of withdrawal from the contract (Article 11). The combined effects of the four amendments of this Article were as follows: 1. the rights of the consumer were fully upheld in the event of delivery of damaged products or goods or services not corresponding to the description provided at the time of offer; 2. the Member States, in conjunction with commercial and professional organisations, were to develop a system to guarantee reimbursement of consumers in the event of the supplier's bankruptcy or insolvency; 3. no payment could be requested from the consumer prior to the supply of the product or performance of the service; 4. in the case of contracts explicitly involving repeated service provision, the withdrawal period (seven working days) would apply after each new delivery of the product, provided that the latter could be returned in its initial state; 5. for credit sales, when the 'right of return' had been implemented by the consumer, the Member States would have to make it possible to withdraw from the contract if: - credit had been granted directly by the supplier of the product or the service; - credit had been granted by a loan company in accordance with a prior arrangement with the supplier. ?

Protection of consumers: distance contracts

\$summary.text

Protection of consumers: distance contracts

Parliament adopted the report by Mrs Ria Oomen-Ruijten, in particular amendments 19 on the elements that must be included in contract solicitation, 20 on television solicitation and 34 on the period during which consumers can withdraw from the contract. ?

Protection of consumers: distance contracts

In its modified proposal, the Commission reflected a number of amendments by Parliament. The principal changes to the initial proposal relate to the following points: - The right of consumers to undertake cross-border operations is more clearly apparent in the recitals. - In response to the concern expressed by Parliament regarding the prohibition of distance selling of medicinal products, a recital has been introduced recalling that the Member States have various means for intervening both under this Directive and under Directives Nos 89/552/EEC (televised advertising) and 92/28/EEC (advertising of medicinal products for human use). - A number of definitions have been clarified: the contracts in question are those concluded in the context of a system for selling or rendering services. As far as the supplier is concerned, the text adopts the definition used by the Directive on unfair terms (No 93/13/EEC). The question of which forms of advertising constitute solicitation is made clear. - Exemptions: goods such as made-to-measure articles and reservation services cannot be excluded from the scope of the Directive. However, goods of this type cannot be subject to a cooling-off period enabling the consumer to change his mind (exemption from the right of cancellation). - In the case of certain telecommunications technologies (fax, electronic mail, telephone and automatic calling machines), the prior consent of the consumer is required. - The obligation to inform the consumer of the content of the solicitation is reinforced by a reference to the right of cancellation and an indication of the VAT costs. The obligation to inform is also broadened in cases of televised solicitation. - No payment may be required of the consumer before the goods are delivered or the service rendered. - In the event that the supplier cannot supply the goods or service ordered but supplies equivalent goods or an equivalent service of the same quality and at the same price, this does not constitute unsolicited supplying. - Provision has been made for mutual recognition of legal proceedings instituted by professional or

consumer organisations. This mutual recognition is confined to those States which accept this type of action. Furthermore, the Directive makes it possible for the courts to order that the dissemination of solicitations be discontinued. - If the consumer discovers a defect in goods after the end of the cooling-off period, he retains his rights to compensation. - Finally, it is desirable for the consumer to be informed of the existence and content of the codes of practice intended to supplement the Directive. ?

Protection of consumers: distance contracts

The Council's common position incorporated, in full or in part, the European Parliament's amendments included in the Commission's amended proposal. The main amendments introduced by the Council related to the following points: - withdrawal of the approach concerning "contract solicitation", which proved to be inappropriate with respect to distance contracts; - use throughout the directive of the terms "distance contracts" instead of "contracts negotiated at a distance"; - removal of the definition of an "order"; - limitation of the definition of an "operator" to only those persons making one or more means of distance communication available to suppliers, since it was their practices that needed to be regulated; - withdrawal and referral to national legislation of the performance of a split contract; - with regard to exemptions, exclusion from the scope of the directive of contracts relating to financial services, contracts concluded at an auction and contracts concluded through the use of public payphones; - distinction between prior information and written confirmation of information; - in the case of communication by telephone (with the exception of automatic calling machines) and electronic mail, the principle of prior consent did not apply; - strengthened provisions linked to the execution of the order (execution no later than 30 days following the date on which the order was forwarded); - with regard to payments, the text did not prohibit prior payments but it stipulated that the supplier should refund the amount paid by the consumer in the case of withdrawal or non-execution of the contract. The text also included a more general provision concerning any form of fraudulent use of payment cards, leaving open the means for recrediting the sums due; - clarification of the provisions concerning the right of withdrawal and the exclusion of contracts relating to: services, if performance had begun with the consumer's agreement; immovable property; audio or video recordings, computer software; newspapers, periodicals and magazines; gaming and lottery services; - relaxation of the provisions concerning judicial actions on the part of consumer organisations: (a) legal action at national level was left to the discretion of the Member States; (b) the provision concerning cross-border legal action was removed; - finally, reference in the minimal clause to the ban on the marketing of medicinal products, without limiting it to only those medicinal products delivered on prescription. ?

Protection of consumers: distance contracts

The Commission considered that the Council's compromise was relatively close to its initial proposal. During the discussions, the Commission had been persuaded to accept the exclusion of financial services and greater flexibility with regard to access to justice. It felt that the solutions reached by the Council could have been more balanced. ?

Protection of consumers: distance contracts

The Committee adopted the draft recommendation for second reading (rapporteur: Mrs Ria OOMEN-RUIJTEN (NL, EPP) on the Common Position of the Council on the proposal for a EP and Council Directive on the protection of consumers in respect of distance selling). Parliament delivered its opinion at first reading on 26 May 1993. Then, 35 amendments were adopted, of which 30 were taken over by the Commission and of which the Council incorporated, in substance or in part, some 20 amendments. Yesterday, 58 amendments were tabled. The rapporteur saw a great number of them adopted and came to the conclusion that, once again, the European Parliament is playing an important role as defender of the consumer's interests. The amendments: the most important amendments adopted yesterday: am 8: The Directive will also include the construction and sale of immovable property; am 15: For any distance contract the consumer shall have a period of not less than seven working days in which he may withdraw from the contract without payment of any costs and without giving any reason; am 59: Where the right of withdrawal has been exercised by the consumer, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge, except for direct return charge where appropriate. Such reimbursement must be carried out within 15 days; am 18: The EP wishes to include in the Directive also the financial services; am 45: Together with trade and professional organisations the Member States shall draw up a guarantee scheme for the purpose of guaranteeing at all times, in the event of the insolvency or bankruptcy of the supplier, the reimbursement of any advances paid by the consumer when the supplier fails to carry out the contract; am 47: Member States must observe the provisions of Directive 89/552/EC concerning the pursuit of television activities; am 61: Any objection by the holder of a payment card in the event of fraudulent use shall render the transaction void where only the number of the card is noted but the card is not presented or electronically identified. In that case, the sum of the transaction shall be repaid to the holder's account as soon as possible, without prejudice of indemnification in the event of abuse of the possibility of lodging an objection; am 53: Member States shall take the necessary measures effectively to protect those consumers who have indicated that they do not wish to be solicited against such soliciting, without prejudice to the particular safeguards available to the consumer under EU legislation concerning the protection of personal data and privacy. Conclusions: Rapporteur OOMEN-RUIJTEN said that, as far as these new selling markets are concerned, the consumer should at least have the same rights as the supplier. This can only be achieved by EU legislation.

Protection of consumers: distance contracts

The rapporteur, Mrs OOMEN-RUIJTEN (EPP, NL), wanted to determine the guarantees for the protection of consumers in cross-border distance contracts. She was worried about the gaps in the Directive on this matter and quoted as an example the distance selling of organised travel. After a television advertisement, consumers knew which agency was organising the travel and the price, but there could be fraudulent use of their payment cards. She also hoped that Amendment No 15 would be taken over as it enabled consumers to withdraw from a contract within seven working days without penalty and without giving any reason. Finally, with regard to financial services, Mrs Oomen-Ruijten called on Parliament to support Amendment No 7 in order to include financial services in the scope of the Directive. The Commissioner, Mrs BONINO, stated that the Commission could take over 25 of the 44 amendments tabled. Firstly, with regard to financial services (Amendment No 7), the Commission would present a communication accompanied by an action plan, and perhaps a proposal for a directive, in February. She also agreed to include in the scope of the Directive contracts concluded for the construction and sale of immovable property, except for

rental (Amendment No 8), and tourist services (Amendment No 9). However, she rejected Amendments Nos 6 and 10 on the definition and on the address of the supplier. She also rejected Amendment No 11 and hoped that the Member States' jurisdiction alone would be responsible for those who are unable to give their consent. She did not agree with Amendment No 13 on the durable medium, which gave rise to the somewhat delicate problem of whether or not the information stored in a computer memory was equivalent to that transmitted in writing. However, Mrs Bonino supported the procedure of customers giving their consent prior to being contacted by telephone or electronic mail. In her view, this would provide a fair balance between the needs of businesses and the rights of consumers. Finally, she agreed with the amendments aimed at enabling public bodies and consumer organisations to take legal action (Amendment No 30), and concerning the burden of proof of the supplier (Amendment No 31). She also took over the following amendments: 1, 3 to 5, 12, 15 to 17, 23 and 24, 32, 33, 35 and 36 (the last two with improved wording).

Protection of consumers: distance contracts

In adopting the report by Mrs Ria OOMEN-RUIJTEN (PPE, NL), the European Parliament amended the common position of the Council as follows: - the scope of the directive includes contracts concluded for the construction and sale of immovable property (except for rental), but excludes contracts relating to financial services; - prior to conclusion of the contract, the consumer must be supplied with the identity and address of the supplier; - the consumer should 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 costs payable would be the direct charges; - where the right of withdrawal has been exercised, the consumer should be reimbursed within thirty days; - in the case of contracts of an indefinite duration concerning the supply of services or products to be performed permanently or recurrently, the conditions under which the contract can be annulled must be clearly indicated; - the prior consent of consumers is necessary before they can be approached by telephone: in such cases, suppliers must disclose their identity and state their intentions at the beginning of each telephone conversation; - Member States must take the necessary measures effectively to protect those consumers who have indicated that they do not wish to be solicited against such soliciting; - consumers must be informed of the provisions of this directive and of the existence of the codes of practice in this field; - an effective scheme to deal with cross-border complaints should be set up; - the Member States shall have two years to implement the provisions of the directive. Within a period of four years the Commission must present a report on the implementation of this directive and on any relevant new proposal. ?

Protection of consumers: distance contracts

The Commission accepted 21 of the 31 amendments adopted by Parliament, including the following: - the directive is to be applied to the overall contract, not to the resulting subsequent operations; - property contracts are to be included once again in the scope of the directive; - information is also to be provided to the consumer in the case of tourist services; - information is to be provided to the consumer as regards long-term contracts; - the consumer is to be provided either in writing or on another durable medium with the information needed for the smooth operation of the contract; - the consumer shall have 7 working days in which to withdraw from the contract without penalty; any previous payments should be reimbursed within 30 days; - the consumer must give his prior consent before receiving substitute goods; - the provisions relating to consumer protection organisations being able to take action under national law before the courts and to the burden of proof are to be compulsory; - the directive is to be transposed within two years; - the consumer is to be provided with information on the existing codes of conduct in the field of distance contracts; - a non-judicial system for dealing with complaints is to be set up with the trade and professional organisations. However, the Commission rejected the amendments aimed at: - adding the address of the supplier to the list of information the consumer should receive before concluding a contract; - clarifying the protection of those who are unable to give their consent; - informing the consumer of the geographical address of the place of business of the supplier to which the consumer may address any complaints; - ensuring that there is no right of withdrawal in the cases of CD-ROMs and CD-Is; - proposing that there should be no right of withdrawal in the cases of books taken out of their original wrapping; - ensuring that the period available to withdraw from the contract applies without prejudice to the consumer's customary rights if the product is faulty or damaged; - ensuring that the identity of the supplier and the commercial purpose of any telephone call are made clear by the supplier at the beginning of the conversation. ?

Protection of consumers: distance contracts

The Council decided to convene the Conciliation Committee, in accordance with Article 189(3) of the Treaty, concerning the proposal for a Directive concerning the protection of consumers in respect of distance contracts. The matter comes under the co-decision procedure between the European Parliament and the Council, and the Council recorded that it could not approve all the amendments to its common position adopted by the European Parliament in second reading.?

Protection of consumers: distance contracts

The rapporteur, Mrs Oomen-Ruijten, welcomed the Conciliation Committee's draft, which would protect consumers from the misuse of distance selling techniques. Many of Parliament's amendments had been taken over, particularly with regard to telephone calls, right of withdrawal, information and penalties should the supplier fail to fulfil its obligations. She also mentioned the progress made on the legal action which consumer organisations could take. Although the directive had not been extended to financial services, the rapporteur placed her confidence in Commissioner Bangemann who, on behalf of the Commission, had undertaken to present legislation on financial services and distance selling. Commissioner Bangemann replied by referring to the Green Paper which would be presented for debate by Parliament. In the meantime, he pointed out that the international conventions on financial services should be applied.

Protection of consumers: distance contracts

In adopting the report by Mrs Ria OOMEN-RUIJTEN (PPE, NL), Parliament approved the joint text for a Directive designed to give the

consumer better protection against the possible abuses of distance contracts. Improvements resulting from the compromise between the Council and Parliament within the Conciliation Committee include: - telephone calls: the identity of the supplier and the commercial purpose of the call must be made clear at the beginning of any conversation with the consumer, in order that the latter may have the requisite information at the outset to hang up if he or she so wishes. - Where a supplier uses distance selling techniques involving an advance payment, he must furnish not only his name but also his address. - Right of withdrawal: the consumer will have a period of not less than seven working days in which to withdraw from the contract without penalty and without giving any reason. The only costs payable are the cost of returning the goods, i.e. the postal charges. - Information: the consumer should be informed 'in a clear and comprehensible manner' (i.e. not in small print) of the possibility for the supplier to provide the consumer with goods or services of equivalent quality and price (e.g. red pullovers instead of green pullovers). - Penalties: if the supplier has failed to fulfil the obligations inherent in the contract, the consumer should be reimbursed as soon as possible. Contracts for the supply of foodstuffs, beverages or other goods intended for current consumption supplied to the consumer's home, residence or workplace are included in this provision of the Regulation. The same applies to contracts for the provision of services, at a later date, with respect to accommodation, transport and catering. Finally, the Regulation lays down that Member States should take the necessary measures to protect consumers against contracts providing for certain means of communication for contacting them. Member States should, for example, act to protect consumers who do not wish to receive intrusive advertising. ?

Protection of consumers: distance contracts

OBJECTIVE: to improve the protection of consumers in respect of abuses in relation to distance contracts. **COMMUNITY MEASURE:** European Parliament and Council Directive 97/7/EC on the protection of consumers in respect of distance contracts. **SUBSTANCE:** the directive covers distance contracts for all goods and services except for contracts: - relating to financial services; - concluded by means of automatic vending machines or automated commercial premises; - concluded with telecommunications operators through the use of public payphones; - concluded for the construction and sale of immovable property; - concluded at an auction. The essential elements of the directive are as follows: a) prior information to the consumer: prior to the conclusion of any distance contract the consumer must be provided with the following information: - the identity of the supplier and, in the case of contracts requiring payment in advance, his address; - the main characteristics of the goods or services; - the price of the goods or services including all taxes; - delivery costs; - the arrangements for payment, delivery or performance; - the existence of a right of withdrawal; - the cost of using the means of distance communication; - the period for which the offer or the price remains valid; - where appropriate, the minimum duration of the contract. This information must be provided in a clear and comprehensible manner. In the case of telephone communication the identity of the supplier and the commercial purpose of the call must be made explicitly clear at the beginning of any conversation. The use by the supplier of distance communications techniques such as automatic calling machines or fax requires the prior consent of the consumer. b) written confirmation of information: the consumer must receive written confirmation or confirmation in another durable medium of the information needed for the smooth operation of the contract. In any event the following must be provided: - information on the conditions and procedures for exercising the right of withdrawal; - 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 conditions for cancelling the contract where it is of unspecified duration or a duration exceeding one year. c) right of withdrawal: for any distance contract the consumer shall have a period of seven working days in which to withdraw from the contract without penalty and without giving any reason. In this case the supplier is obliged to reimburse (within 30 days) 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. The consumer may not exercise the right of withdrawal 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; - 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 clearly personalized which cannot be returned or which are liable to deteriorate 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. d) performance: unless the parties have agreed otherwise, the supplier must execute the order within 30 days from the day on which the order was given. Where there is failure to execute the contract because the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund within 30 days. The prior agreement of the consumer may be necessary before the supply of a substitute product. e) payment by card: the directive requires the Member States to take measures to ensure that the consumer can request cancellation of a payment where fraudulent use has been made of his payment card and that he will be recredited with the sums paid in the event of fraudulent use. f) inertia selling: Member States must 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. g) judicial or administrative redress: the directive requires Member States to ensure that adequate and effective means exist to ensure compliance with the directive. These means shall include the possibility for certain bodies to take action before the courts or the competent administrative bodies (public bodies, consumer organizations, professional organizations having a legitimate interest in acting). Lastly, the Member States may introduce or maintain more stringent provisions to ensure a higher level of consumer protection (minimal clause). **ENTRY INTO FORCE:** 04/06/1997 **DEADLINE FOR TRANSPOSITION:** 04/06/2000 ?

Protection of consumers: distance contracts

This document constitutes the Commission's report on the implementation of Directive 97/7/EC, as provided by its Article 15(4) of that Directive. In particular, the Commission looks at whether the national divergences in transposition and the use of the minimum clause in Article 14 (which states that Member States may introduce more stringent provisions) have had an impact on the Internal Market and affected business and consumer confidence in cross border trade. The Commission does not consider it appropriate to put forward any proposal for revising the Directive until the diagnostic phase of the review of the consumer acquis is concluded.

Scope of Application ? Article 3 exemptions: Article 3 limits the scope of the Directive by excluding certain distance contracts from all or part of the Directive's provisions. The Commission needs to establish whether the exemptions are still appropriate, whether they need to be revised, expanded or repealed. The report considers a number of problems encountered by the Commission. It particularly mentions the fact that the increase in popularity of on-line auctions since the adoption of the Directive has led to a significant rise in consumer complaints. Whereas originally websites such as eBay were geared towards C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods. The Commission is aware of national case law on whether websites such as eBay amount to auction houses and

are therefore exempted from the Directive. The transposition checks have confirmed the need to look at the meaning of 'auction' in national laws. Some Member States appear to have only partially transposed the exemption and others have extended the partial exemptions at Article 3(2) to all the provisions of the Directive.

Prior Information ? Article 4: the prior information requirements raise some important interpretation questions. Although a significant number of Member States have transposed Article 4(1) literally, most of them have also used the minimum clause to enhance national consumer protection. The transposition checks have revealed that some requirements have been transposed poorly in some Member States. This report focuses on those requirements which may have been badly transposed because of possible interpretation problems with the Directive. The timing and modalities for giving prior information may need to be reconsidered to ensure consumers are adequately informed when deciding whether to enter into a transaction. Some Member States, including Belgium and Sweden have not explicitly referred to taxes in their transposition. The Commission will clarify with them whether it is a principle of national law that taxes are always included in references to price. It will also consider whether the Directive should explicitly refer to other forms of charges made to the consumer e.g. booking/handling fees taking into account Article 7(4)(c) of the UCP. The Commission is also aware of problems concerning price transparency and the operation of premium rate services and will examine whether the provisions of the Directive relevant to premium rate services need to be reinforced. A significant number of Member States have not expressly transposed the good faith requirement at Article 4(2) and/or make no express reference to the protection of certain types of consumers, including minors.

Written Confirmation ? Article 5: the Commission states that the timing of written confirmation needs to be discussed with a number of Member States. Enquiries concerning the information to be confirmed in writing must also be made with some Member States since some may have omitted to prescribe confirmation of all, or part of the required information. Moreover, the minimum clause has led to divergences in national requirements such as language requirements (Cyprus, Greece, Spain) or additional information to be provided in writing. Confirmation of information concerning the right of withdrawal in particular has generated additional national rules. Some Member States and stakeholders have raised the need to clarify the concept of 'durable medium' in Article 5(1) in the light of Directive 2002/65/EC and new technologies.

Right of Withdrawal ? Article 6: the Directive sets a minimum period of seven working days for the consumer to withdraw from the contract. Member States have transposed this requirement in a multitude of ways, the most common being seven working days or 14 calendar days. The point from which the period starts to run raises more fundamental questions. For instance, 'receipt' of goods may be subject to different interpretations in the Member States. The issue of when receipt takes place has been raised on occasion and will be considered in the broader review work. The Commission also wonders whether the treatment of deliveries in batches needs to be re-examined in the course of the review. The financial consequences of withdrawing from a contract and/or the timing of reimbursement must also be discussed with a number of Member States. The minimum clause has been used when transposing Article 6. Some of the exemptions at Article 6(3) have not been transposed evenly across Europe. National divergences are particularly clear when looking at the modalities for exercising the right of withdrawal: in Portugal the goods must be returned within 30 days; the form of the notice of withdrawal is prescribed in some Member States; a number of Member States, including the United Kingdom, Finland and Portugal have made provisions concerning a duty of care whilst the goods are in the consumer's possession. Member States have also made different uses of the regulatory option concerning the cost of returning the goods, including payment by the consumer in all cases (e.g. Cyprus), payment by the consumer in certain circumstances (e.g. United Kingdom, Ireland, Belgium), payment by the consumer at the supplier's discretion (Estonia, Malta) and payment by the supplier where this can be done by normal post (Finland). In Estonia, there is a 10 euro cap on the cost to be borne by the consumer when returning the goods.

Performance ? Article 7: overall, the transposition of Article 7 dealing with performance of the contract gives rise to problems associated with timing. The main comment relates to the inconsistent use of terminology throughout the Directive and within Article 7 in particular. Indeed, Article 7 refers to 'days' whereas Article 6 refers to 'working days'. In addition, the point from which calculation periods run is specified in Article 7(1) ('from the day following' the order) and unspecified in Article 7(2). As presently drafted, Article 7(2) has been interpreted in a number of ways. Some Member States have interpreted the timing requirement as applying only to the refund, others to both the refund and the notification of non availability. The transposition of Article 7(3) is also weak in some Member States.

Restrictions on the use of certain means of distance communication - Article 10: many Member States have failed to notify their national provisions transposing this Article. The Commission states that this may be justified by the fact that subsequent community legislation also covers these restrictions. Directive 2002/58/EC on privacy and electronic communications requires Member States to ensure that the use of automated calling systems without human intervention, facsimile machines or electronic mail be only allowed for the purposes of direct marketing in respect of subscribers who have given their prior consent ('opt-in' system).

Conclusions: the transposition of the Directive raises a number of confirmed or apparent problems. Many of these may emanate from the wording of the Directive. Although, the Directive appears to be flexible enough to cover new technologies and forms of marketing, the practical application of the Directive may not weather the test of time. The proper execution of the rights and obligations set out in the Directive is not always practicable. In addition, the transposition checks have revealed significant divergences between national laws as a result of the use of the minimum clause. It is unclear at this stage to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. The Commission must establish this in order to decide whether the Directive needs to be revised. These issues will all be examined further in the course of the review of the acquis. In doing so, the Commission will need to take into account not only consumer protection legislation, but also other fields of community legislation including e-commerce and privacy legislation.