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**INFORMAL WORKING DOCUMENT - FOR INFORMATION PURPOSES ONLY**

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on consumer rights**

2008/0196 (COD)

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Proposal for a

## DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty *on the Functioning of the European Union*, and in particular Article 114 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 294 of the Treaty *on the Functioning of the European Union*<sup>3</sup>,

Whereas:

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises<sup>4</sup>, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>5</sup>, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts<sup>6</sup>, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees<sup>7</sup>, lay down a number of contractual rights for consumers.
- (2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects *whilst allowing* and ~~move away from the minimum harmonisation approach in the former Directives under which~~ Member States could *to* maintain or adopt ~~stricter~~ national rules *in relation to certain other aspects, providing for a higher level of consumer protection.*

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ L 372, 31.12.1985, p. 31.

<sup>5</sup> OJ L 95, 21.4.1993, p. 29.

<sup>6</sup> OJ L 144, 4.6.1997, p. 19. Directive, as last amended by Directive 2007/64/EC (OJ L 319, 5.12.2007, p. 1).

<sup>7</sup> OJ L 171, 7.7.1999, p. 12.

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- (3) Article ~~153~~ **169**(1) and ~~(32)~~(a) of the Treaty *on the Functioning of the European Union* provides that the ~~Community~~ **Union** is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article ~~95~~ **114** thereof.
- (4) In accordance with Article ~~14(2)~~**26** of the Treaty *on the Functioning of the European Union*, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer contract law is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the respect of the principle of subsidiarity.
- (5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited ~~by consumers~~. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium-sized enterprises (including individual ~~entrepreneur~~**traders**) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of *certain aspects of* consumer information and *of* the right of withdrawal in distance and off-premises contracts will contribute to ~~the~~ **a high level of consumer protection and** better functioning of the business to consumer internal market.
- ~~(6) The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing Community legislation in the field of consumer contracts concluded at a distance or away from business premises' consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on consumer contract law diverge significantly.~~
- (7) *Certain* These disparities *in the Member States' legislation in the field of consumer contracts, particularly contracts concluded at a distance or away from business premises*, create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. *Inappropriate* fragmentation also undermines consumer confidence in the internal market. ~~The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the Community. This problem is particularly acute in the light of new market developments.~~

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- (8) *Unless otherwise specified and in accordance with Article 169 of the Treaty on the Functioning of the European Union, the provisions of this Directive should not hinder the Member States from adopting or maintaining more stringent measures of national law, which improve consumer protection. However, the full harmonisation of some key regulatory aspects will be justified in order to secure a single regulatory framework for consumer protection and in order to considerably increase legal certainty for both consumers and business traders in cross-border business. In this case, both consumers and business traders will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Community Union. The effect Thus, the consumer will be to enjoy a high common level of protection across the Union. Furthermore, by establishing uniform rules at Union level, this should eliminate the barriers stemming from the disproportionate fragmentation of the rules and to complete the internal market in this area. These barriers can only be eliminated by establishing uniform rules at Community level. Furthermore consumers will enjoy a high common level of protection across the Community.*
- (9) The field harmonised by this Directive should cover certain aspects of business to consumer contracts. These are rules on information to be provided before conclusion and during performance of the contract, the right of withdrawal for distance and off-premises contracts, consumer rights specific to contracts of sale and unfair contract terms in consumer contracts.
- (10) The provisions of this Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council applicable to contractual obligations (Rome I)<sup>8</sup>.
- (10a) *This Directive should not apply to healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health.*
- (10b) *Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of those activities, in the light of which Member States should be able to adopt other or more stringent consumer protection measures in relation to such activities.*
- (11) The existing Community Union legislation *inter alia relating to* consumer financial services *or package travel* contains numerous rules on consumer protection. For this reason, ~~the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps~~ *Articles 5 to 19 and Article 23 a of this Directive should not apply to contracts relating to financial services and Article 9 to 19 should not apply to distance and off-premises contracts relating to package travel without prejudice to other provisions of existing Union legislation. With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at the Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured. The Commission should aim at complementing Union legislation in the field of financial services in order to close existing gaps and protect consumers in all types of contracts.*

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<sup>8</sup> OJ L 177, 4.7.2008, p. 6.

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- (11a) *Articles 9 to 19 of this Directive should be without prejudice to the application of the provisions of the Member States relating to the acquisition of immovable property and guarantees relating to immovable property or the formation or transfer of rights in rem in immovable property. This includes agreements connected with such legal acts, such as sales of immovable property still to be developed and hire-purchase.*
- (11b) *As no difficult psychological situation applies when contracts, in accordance with the provisions of the Member States, are established by a public office-holder, such contracts should be excluded from the scope of Articles 9 to 19 of this Directive.*
- (11c) *For the purposes of this Directive, leasing contracts for motor vehicles, where the motor vehicle is returned at the end of the contract, should be considered as motor vehicle rental services.*
- (11d) *Many Member States have chosen to apply national consumer protection rules to other entities such as non-governmental organisations, start-up businesses and small and medium-sized enterprises, and others may wish to do so. It should be recalled that Member States may extend the scope of the national rules adopted in order to implement this Directive to cover natural or legal persons who are not consumers within the meaning of this Directive.*
- (11e) *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 provisions of this Directive which apply to sales contracts. However, a withdrawal right should only apply until the moment the consumer starts to download the digital content.*
- (12) The new definition of distance contract should cover all cases where ~~sales and service~~ contracts *concerning the supply of a good or the provision of a service* are concluded *between the trader and the consumer under an organised distance sales or service-provision scheme and without the simultaneous physical presence of the parties*, using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). *Websites offering purely information on the trader, his goods and/or services should not be covered by the definition of such an organised distance sales or service-provision scheme, even if such websites indicate one or more means of distance communication.* This should create a level playing field for all distance traders. ~~It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.~~
- (13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader ~~is an occasional distance seller or that he~~ uses an organised *distance sales or service-provision* scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.

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- (14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are ~~under psychological pressure~~ **temporarily in a special situation which is different from the situation in a shop, for instance from a psychological point of view and as regards the scope for comparing goods and prices**, no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract **only when the main components of the contract have been determined in the course of an excursion, a leisure event or a sales demonstration. Nevertheless, contracts under which the payment to be made by the consumer does not exceed EUR 40 should not be covered by the above definition, so that for instance street traders, whose goods are supplied immediately, are not overburdened with obligations as regards information. A right of withdrawal is also unnecessary in such cases, since the implications of such contracts are readily understandable. Nevertheless Member States should remain free, and be encouraged, to set a lower value.**
- (15) Business premises should include premises in whatever form (such as shops, **taxis** or lorries) which serve as a permanent place of business **activity** for the trader. Market stalls ~~and fair stands~~ should be treated as business premises even though they may be used by the trader on a temporary **and regular** basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.
- (16) ~~The definition of Durable medium~~ **media** should include in particular ~~documents on paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard drive of the computer on which the electronic mail or a pdf file is stored~~ **disks of computers. In order to qualify as a "durable medium", an electronic mail or an Internet website should firstly enable the consumer to store the information for as long as it is relevant for him to protect his interests stemming from his relationship with the trader. Secondly, the electronic mail or website should allow for the information to be stored in such a way as to make it impossible for the trader to change it unilaterally.**
- (17) ~~Consumers~~**The consumer** should be **given comprehensive** ~~entitled to receive~~ information before ~~the conclusion of the contract. However traders should not have to provide the information when already apparent from the context. For example in an on premises transaction, the main characteristics of a product, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off premises transactions, the trader should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.~~ **he is bound by an on-premises contract, a distance contract, an off-premises contract or a corresponding contract offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.**

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- (18) Traders should be obliged to inform consumers in advance of any arrangement resulting in the consumers paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumers' credit or debit card.
- (19) In the case of public auctions, due to the nature and tradition of that sales method, the auctioneer may instead of communicating the geographical address and the identity of the seller for whom he is selling the goods replace that with his own contact details.
- ~~(20) The consumer should know whether he is contracting with the trader or with an intermediary acting on behalf of another consumer, since in the latter case the consumer may not enjoy the protection under this Directive. Therefore the intermediary should inform of this fact and the consequences thereof. The notion of intermediary should not include online trading platforms which do not conclude the contract in the name of or on behalf of any other party.~~
- (21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.
- (22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ***so that, until the expiration of the withdrawal period, he can*** ~~which allows him to~~ ascertain the nature, ***quality*** and functioning of the goods. ***Such a right of withdrawal should also be granted for off-premises contracts.***
- (23) The current varying lengths of the withdrawal periods both between the Member States and for distance and off-premises contracts cause legal uncertainty and compliance costs. The same withdrawal period should apply to all distance and off-premises contracts.
- ~~(24) To ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>9</sup> should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days.~~
- (25) The rules on distance contracts should be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders as set out by Articles 9 and 11 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- ~~(26) When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately,~~ ***Where goods are supplied in more than one delivery,*** the withdrawal

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<sup>9</sup> OJ L 124, 8.6.1971, p. 1.

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period should ~~start when~~ **begin from the day on which** the consumer or a third party **other than the carrier and** indicated by the consumer acquires the material possession of the **first partial shipment** ~~each individual good~~. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer or a third party indicated by the consumer acquires the material possession of the last lot or piece. ***If multiple goods are ordered by the consumer in one order but are delivered separately, the withdrawal period should start when the consumer acquires possession of the last good.***

- (27) 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 should be extended. However, in order to ensure legal certainty over time, a ~~three-month~~ **one-year** limitation period should be introduced, ~~provided that the trader has fully performed his contractual obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods or has fully provided the services ordered by the consumer.~~ ***However, Member States should be allowed to maintain existing legislation to extend that limitation period.***
- (28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised ~~standard~~ **model** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the ~~Community~~ **Union**-wide standard form relating for example to the font size.
- (29) As experience shows that many consumers and traders prefer to communicate via the trader's website, there should be a possibility for the trader to give the consumer the option of filling in a web-based withdrawal form. In this case the trader should provide an acknowledgement of receipt by email without delay.
- (30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer, ***with the exception of payments for express deliveries at the express wish of the consumer. Reimbursement should be possible by any means of payment, provided they are legal tender in the Member State where the consumer receives them. Therefore, reimbursement shall not take place in the form of vouchers or credit notes.***
- (31) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to ascertain the nature and functioning of the good. In this case the consumer should be liable for any diminished value of the goods. In order to ascertain the nature and functioning of a good, the consumer should only handle or try it in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. In order to ensure the effectiveness of the withdrawal right in service contracts, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the immediate performance of the service before the expiration of the withdrawal period, consumers should bear no cost for such a service.
- (32) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen days after having informed the trader about his decision to withdraw.

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- (33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product, ***and exercising a right of withdrawal would unfairly disadvantage the trader***. That is applicable ***in particular to foodstuffs and other hygienically sensitive or perishable goods***, for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur). ***Certain other goods or services whose price is dependent on market fluctuations, for instance commodities, should also be exempt from the right of withdrawal.***
- (34) Furthermore, in case of distance ***and off-premises*** contracts for the provision of services, for which the performance begins during the withdrawal period (e.g. ***for instance*** data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement, ***provided that it is a case of informed consent, that is to say that the consumer has been informed of the consequences of this decision in terms of losing his right of withdrawal.***
- (35) The Commission has found some key consumer problems in the home improvement sector where consumers are under high pressure to order expensive renovation works. The scope of the information and withdrawal rules should be clarified and extended in order to cover this kind of contract. Only contracts for the conveyance of interests in real property should be excluded from the scope of the rules on information and withdrawal rights applicable to distance and off-premises contracts.
- (36) The application of a right of withdrawal may be inappropriate for certain services relating to accommodation, transport and leisure. The conclusion of the corresponding contracts implies the setting aside of capacity which, if a right of withdrawal was introduced, the trader may find difficult to fill. Therefore these distance contracts should not be covered by the provisions on consumer information and the right of withdrawal.
- (37) For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of ***distance and off-premises*** contracts, except under strictly defined circumstances which can easily be proved. ~~Therefore, no right of withdrawal should apply for urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation as well as for supermarket home delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household and should therefore not be subject to a right of withdrawal. The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on delivery and passing of risk.~~
- (37a) ***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 it is appropriate to harmonise the national rules on delivery and passing of risk.***

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- (37b) *Where the trader has failed to fulfil his obligations to deliver, the consumer should call upon him, on a durable medium, to make the delivery within no less than seven days and notify him of his intention to withdraw from the contract if delivery does not take place. The consumer should be deemed to have withdrawn from the contract if no action has been taken by the time the deadline expires. Without prejudice to his rights to damages, the consumer should be entitled to a refund within seven days of withdrawal if payment has already been made. It should be possible for Member States to adopt or maintain provisions of national law, in order to ensure a higher level of consumer protections.*
- (38) In the context of consumer sales, the delivery of goods can take place in various ways: *either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver as soon as possible but in any event not later than thirty days from the day of the conclusion of the contract.* ~~Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking possession of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader.~~
- (38a) *In many transactions consumers are provided with insufficient choices of means of payments or they are charged if they refuse to use certain means. This situation should be addressed by means of a provision which ensures that the trader will offer to the consumer different means of payment and, in the case of distance contracts, these should include both electronic and non-electronic means of payment. An example of a non-electronic system of payment would be the printing of an order from the trader's web site to be paid in cash at a bank or at any other contact point of the trader.*
- (39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend *inter alia* on whether the goods are new or second-hand as well as on the expected life-span of the goods. *Where goods other than those ordered have been delivered, or in the event of undershipment, the goods should be presumed not to be in conformity with the contract.*
- (40) *The consumer should in the first instance have the option of requiring the trader to repair the goods or to replace them unless those remedies are impossible or disproportionate. Whether or not a remedy is disproportionate should be determined objectively. A remedy should be considered disproportionate if it imposes, in comparison with other remedies, unreasonable costs. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy.* ~~If the good is not in conformity with the contract, firstly, the consumer should have the possibility to require the trader to repair the goods or to replace them at the trader's choice unless the trader proves that those remedies are unlawful, impossible or causes the trader disproportionate effort. The trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity. The lack of spare parts should not be a valid~~

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~~ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.~~

- (41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials. Furthermore, the consumer should not compensate the trader for the use of the defective goods. ***The consumer should be entitled to claim damages, in accordance with provisions of applicable national law, for any loss resulting from lack of conformity with the sales contract and not remedied by the trader. It should be possible for such damages to include non-pecuniary damages where applicable national law so provides.***
- (42) ~~When the trader has either refused or has more than once failed to remedy the lack of conformity~~ The consumer should be entitled to choose freely any of the available remedies ***if he is not entitled to have the goods repaired or replaced.*** ~~The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the~~ ***It should be possible for Member States to adopt or maintain provisions of national law on the free choice of remedies in the event of lack of conformity, in order to ensure a higher level of consumer protection.***
- (42a) ***It should be stipulated that in certain cases the trader may be held liable for a lack of conformity that existed at the time the risk was transferred to the consumer, even if the lack of conformity becomes apparent only subsequently.***
- (42b) ***Where the trader, as final seller, is liable to the consumer because of an act or omission by the producer, it should be ensured that the trader, as final seller, can pursue remedies against the person or persons liable in the contractual chain. To this end, Member States' national provisions should determine the person or persons liable, together with the relevant actions and procedure.***
- (42c) ***With regard to lack of conformity, the consumer should be entitled to a two-year liability period. There should be a rebuttable presumption in the consumer's favour that any lack of conformity which has become apparent within six months after the risk passed to the consumer already existed when the risk passed. It should be possible for Member States to adopt or maintain provisions of national law on liability periods, duration for reversal of the burden of proof or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of consumer protection.***
- (43) ~~Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.~~
- (44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights ***under the national provisions in force and those laid down in this Directive.***
- (45) There is a need to protect consumers against unfair contract terms which have not been individually negotiated, such as standard contract terms. The rules on unfair terms should

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not apply to terms which the consumer agreed upon following a negotiation. Being afforded the possibility to choose between different contract terms which have been drafted by the trader or a third party on behalf of the trader should not be regarded as a negotiation.

- (46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect ~~mandatory~~ statutory, ~~or~~ regulatory **or public policy** provisions of the Member States which comply with ~~Community~~ **Union** law. Similarly, **contract terms should reflect the principles and provisions of the Charter of Fundamental Rights of the European Union. Terms** which reflect the principles or provisions of international conventions to which the **Community Union** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.
- (47) **All contract terms should be expressed in a clear and comprehensible manner. If a contract term is in writing, it should always** ~~Consumer contracts should~~ be drafted in plain, intelligible language ~~and be legible~~. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.
- (47a) **Traders should be free to choose the way in which contract terms are communicated, for example the font type or size in which the contract terms are drafted. Member States should refrain from imposing any presentational requirements, except for those related to persons with disabilities or where the goods or services may present a particular risk to the health and safety of the consumer or a third person. Member States may also seek to impose additional requirements where due to complexities inherent in contracts for those goods or services, there is a risk of consumer detriment including issues arise relating to competition in that sector. This may apply, for example, to contracts relating to financial services, gas, electricity and water, telecoms and immovable property. However, this should not apply to formal national requirements concerning the conclusion of the contract or other formal requirements such as for instance the language of the terms, requirements on the content of the terms or the formulation of certain contract terms for specific sectors. This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States should be able to maintain or introduce in their national law linguistic requirements relating to the contractual terms.**
- (48) When making an assessment of good faith, particular regard should be made to the strength of the bargaining positions of the parties, whether the consumer was induced to accept the term and whether the goods or services were sold or supplied on the special order of the consumer. The requirement of good faith may be satisfied by the trader where he deals fairly and equitably with the other party whose legitimate interests he should take into account.
- (49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into

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account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer. ***This exclusion does not apply to the remuneration foreseen for the trader from ancillary or contingent charges set out in the contract, including fees or charges for breaching any of the terms of the contract, which should be fully subject to the fairness test.***

- (50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two ***non-exhaustive*** lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise. ~~These same lists should apply in all Member States.~~
- ~~(51) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>10</sup>.~~
- ~~(52) In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~
- ~~(53) The Commission's power to amend Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.~~
- (54) The Member States may use any concept of national contract law which fulfils the required objective that unfair contract terms should not be binding on the consumer.
- (55) The Member States should ensure that their courts or administrative authorities have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts.
- (55a) The Member States should ensure that their national authorities have the necessary level of cooperation with the European Consumer Centre (ECC) network, so as to react in cross-border cases, especially on pending requests at the ECCs.***
- (56) In accordance with the Treaty, the Directive provides for a high level of consumer protection. Nothing in this Directive prevents traders from offering consumers contractual arrangements which go beyond the protection afforded by this Directive.
- (57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

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<sup>10</sup> OJ L 184, 17.7.1999, p. 23.

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- (58) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and they must ensure that these are enforced. The penalties should be effective, proportionate and dissuasive.
- (59) The consumer should not be deprived of the protection granted by this Directive. Where the law applicable to the contract is that of a third country, Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (60) The ~~European~~ Commission, *following consultation with the Member States and stakeholders*, will look into the most appropriate way to ensure that all consumers *and traders* are made aware of their rights at the point of sale. *The Commission should avail itself especially of the means provided by information and communication technology tools and public media.*
- (61) Since inertia selling, which consists of unsolicited supplies of goods or services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')<sup>11</sup> but no contractual remedy is provided thereof, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the provision of any consideration for such unsolicited supplies.
- (61a) *Provision should be made for a mutual evaluation process in which, during the transposition period for this Directive, Member States would first have to screen their legislation in order to ascertain what stricter provisions, which are compliant with the Treaty on the Functioning of the European Union, are to be maintained or adopted in their legal system in order to ensure a higher level of protection for the consumer. By the end of the transposition period for this Directive, Member States should draw up a report on the results of this screening. Each report should be submitted to all other Member States and stakeholders. Member States would then have six months in which to submit their observations on these reports. Not later than one year after the end of the transposition period for this Directive, and every three years thereafter, the Commission should draw up a summary report, accompanied where appropriate by legislative proposals. If necessary, the Commission could assist the Member States in devising a common method.*
- (61b) *To ensure a high level of consumer protection in all Member States, persons and organisations with a legitimate interest in consumer protection should be encouraged to notify the Member States and the Commission about their evaluations and issue non-binding recommendations so that they can be taken into account when this Directive is reviewed.*

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<sup>11</sup> OJ L 149, 11.6.2005, p. 22.

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- (62) Directive 2002/58/EC already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Article 10 of Directive 97/7/EC should be deleted.
- ~~(63) It is appropriate to review this Directive if some barriers to the internal market were identified. The review could lead to a Commission proposal to amend this Directive, which may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the acquis in order to achieve a high, common level of consumer protection.~~
- (64) Directives 85/577/EEC, 93/13/EEC and 97/7/EC and Directive 1999/44/EC should be repealed.
- (65) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.
- (66) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

## Chapter I

### Subject matter, definitions and scope

#### *Article 1* *Subject matter*

The purpose of this Directive is to ~~contribute to the proper functioning of the internal market and~~ achieve a high level of consumer protection and **contribute to the proper functioning of the internal market** by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

#### *Article 2* *Definitions*

For the purpose of this Directive, the following definitions shall apply:

- (1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are **primarily** outside his trade, business, craft or profession.

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*Member States may maintain or extend the application of the rules of this Directive to legal or natural persons which are not "consumers" within the meaning of the first paragraph of this point;*

- (2) 'trader' means any natural or legal person who, *irrespective of whether privately or publicly owned*, ~~in contracts covered by this Directive~~, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader *in relation to contracts covered by this Directive*;
- (42a) 'goods' means any tangible movable item, *and any intangible item usable in a manner which can be equated with physical possession*, with the exception of *goods sold by way of execution or otherwise by authority of law. Water, gas and electricity shall also be considered as 'goods' within the meaning of this Directive where they are put up for sale in a limited volume or set quantity*;
- ~~(a) goods sold by way of execution or otherwise by authority of law;~~
- ~~(b) water and gas where they are not put up for sale in a limited volume or set quantity;~~
- ~~(c) electricity;~~
- (2b) *'good made to the consumer's specifications' means any non-prefabricated good made on the basis of an individual choice or decision by the consumer;*
- (5) 'service ~~contract~~' means any ~~contract other than a sales contract~~ whereby a service is ~~provided~~ *work or other service of any kind provided* by the trader to the consumer *for remuneration*;
- (35a) 'sales contract' means any contract *whereby a trader grants ownership of goods to a consumer in accordance with the applicable national law, or undertakes to grant such ownership, and whereby the consumer undertakes to pay the agreed price. Contracts for the supply of goods to be manufactured or produced shall also be defined as sales contracts for the purposes of this Directive* ~~for the sale of goods by the trader to the consumer including any mixed-purpose contract having as its object both goods and services~~;
- (5b) *'mixed-purpose contract' means any contract that includes both aspects relating to the provision of services and aspects relating to the supply of goods;*
- (6) 'distance contract' means any *contract for the supply of a good or the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer are not simultaneously physically present for the conclusion of the contract, but, rather, make sales or service contract where the trader, for the conclusion of the contract, makes* ~~exclusive use of one or more means of distance communication~~;
- ~~(7) 'means of distance communication' means any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties;~~

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- (8) 'off-premises contract' means **any contract between a trader and a consumer for the supply of a good or the provision of a service:**
- (a) ***which is*** ~~any sales or service contract~~ concluded away from business premises with the simultaneous physical presence of the trader and the consumer or any sales or service contract, **or**
  - (aa) for which an offer was made by the consumer ***with the simultaneous physical presence of the trader and the consumer away from business premises*** ~~in the same circumstances~~, or
  - (b) ***whose main components have been determined in the course of an excursion, a leisure event or a sales demonstration organised by the trader or by a third party on behalf of the trader*** ~~any sales or service contract concluded on business premises but negotiated~~ away from business premises, with the simultaneous physical presence of the trader and the consumer, ***the aim of such excursion, leisure event or demonstration being to conclude a contract subsequently on business premises;***
- (9) 'business premises' means:
- (a) any immovable or movable retail premises, including seasonal retail premises, where the trader carries on his activity on a permanent basis, or
  - (b) market stalls ~~and fair stands~~ where the trader carries on his activity on a regular or temporary basis;
- (10) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (11) 'order form' means an instrument setting out the contract terms, to be signed by the consumer with a view to concluding an off-premises contract;
- ~~(12) 'product' means any good or service including immoveable property, rights and obligations;~~
- (13) 'financial service' means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- ~~(14) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;~~
- ~~(15) 'auction' means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication and where the highest bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed price offer, despite~~

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~~the option given to the consumer to conclude it through a bidding procedure is not an auction;~~

- (16) 'public auction' means a method of sale where goods are *a good or a service is offered by the trader to consumers, **during an event which is physically accessible to the public**, who attend or are given the possibility to attend the auction in person, through a **transparent**, competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods **a third party (the auctioneer), who, for pecuniary consideration, acts as the trader's agent. In an ascending price auction, the good or service is sold to the consumer or a person acting on his behalf making the highest bid. In a descending price auction, the good or service is sold to the consumer or a person acting on his behalf who is first to agree immediately to purchase the good or service for the asking price;***
- (17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the ~~Community~~ **Union** or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;
- (18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer, ***in addition to his legal obligations relating to the guarantee of conformity**, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications **or any other requirement not related to conformity** set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;*
- ~~(19) 'intermediary' means a trader who concludes the contract in the name of or on behalf of the consumer;~~
- (20) 'ancillary **linked** contract' means a ***any contract for the supply of a good or the provision of a service:***
- (a) ***which forms, from an objective point of view, a commercial unit with** by which the consumer acquires goods or services related to a distance contract or an off-premises contract; and*
- (b) ***where the these goods are supplied or the services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.***

***A commercial unit shall be deemed to exist where the goods supplied or services provided under the linked contract are related to the performance of the distance contract or of the off-premises contract, as the case may be, or to the use of the goods supplied or of the services provided under such distance or off-premises contract.***

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## Article 3

### Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to ~~sales and service contracts concluded between the trader and the consumer~~ **for the supply of a good or the provision of a service and to mixed-purpose contracts.**
2. This Directive shall **be without prejudice to sector-specific Union legislation governing contracts concluded between a trader and a consumer.** ~~only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation~~
  - 2a. **This Directive shall not apply to contracts relating to:**
    - (a) **social services;**
    - (b) **healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health;**
    - (c) **gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.**
  - 2b. **Articles 5 to 19 and Article 23 a shall not apply to contracts:**
    - (a) **relating to financial services;**
    - (b) **falling within the scope of Directive 2002/65/EC.**
3. **Subject to paragraphs 4 to 7 of this Article, Articles 9 to 19 shall apply to distance and off-premises contracts.** ~~Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council<sup>12</sup> and of Council Directive 90/314/EEC<sup>13</sup>.~~
4. **Articles 9 to 19 shall not apply to distance and off-premises contracts:** ~~5, 7, 9 and 11 shall be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council<sup>14</sup> and Directive 2000/31/EC of the European Parliament and of the Council<sup>15</sup>.~~
  - (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;**

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<sup>12</sup> OJ L 280, 29.10.1994, p. 83.

<sup>13</sup> OJ L 158, 23.6.1990, p. 59.

<sup>14</sup> OJ L 376, 27.12.2006, p. 36.

<sup>15</sup> OJ L 178, 17.7.2000, p. 1.

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*(b) falling within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours<sup>16</sup> or Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts<sup>17</sup>;*

*(c) which, in accordance with the provisions of the Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful consideration and with knowledge of its legal scope.*

5. *Articles 9 to 19 shall not apply to 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.*
6. *Articles 9 to 19 shall not apply to distance contracts:*
  - (a) concluded by means of automatic vending machines or automated commercial premises;*
  - (b) concluded with telecommunications operators through public payphones for the use thereof, or relating to single telephone, Internet or fax connections established by the consumer.*
7. *Articles 12 to 19 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.*
8. *Subject to paragraphs 9, 10 and 11 of this Article, Articles 22 to 29 shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed-purpose contract, Articles 22 to 29 shall only apply to the goods.*
9. *Article 22a and 23a shall also apply to service contracts and mixed-purpose contracts.*
10. *Articles 22 to 29 shall not apply to:*
  - a) electricity;*
  - b) water and gas, where they are not put up for sale in a limited volume or set quantity.*
11. *Articles 22 to 29 shall not apply to the sale of second-hand goods at public auctions.*

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<sup>16</sup> OJ L 158, 23.6.1990, p. 59.

<sup>17</sup> OJ L 33, 3.2.2009, p. 10.

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## Article 4

### ~~Full~~ Degree of harmonisation

1. **Except where provided for in paragraph 1(a) and 1(b)**, Member States may maintain or introduce, in their national law, **more stringent** provisions, **compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level of consumer protection, under the conditions and to the extent specified in Article 5, Article 9(3b) and 9(3c), Articles 22 to 29, Article 31(4) and Articles 34 and 35.**
- 1a. **Member States may maintain in force, in their national law, more stringent provisions, which are compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level of consumer protection, as laid down in Articles 12(4) and Article 13(2).**
- 1b. Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in **Article 2, Article 9(1) to (3a) and Article 9(3e), Articles 10 and 11, Article 12(1) to (3), Article 13(1), Articles 14 to 19, Articles 30 to 33 and Articles 36, 37 and 38**, including more or less stringent provisions to ensure a different level of consumer protection.

## Article 4a

### Periods, dates and time limits

**Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>18</sup> shall apply to the calculation of the periods contained in this Directive.**

## Chapter II

### Consumer information for on-premises contracts

## Article 5

### ~~General~~ Information requirements for on-premises contracts

1. **On concluding an on-premises contract**, ~~Prior to the conclusion of any sales or service contract,~~ the trader **or the person acting on his behalf** shall provide the consumer with the following information **in a clear and intelligible manner**, if not already apparent from the context:
  - (a) the main characteristics of the **good or service, product**, to an extent appropriate to the ~~product~~ **good or service**;

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<sup>18</sup> OJ L 124, 8.6.1971, p. 1.

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- (b) ~~the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;~~
  - (ba) ***the trader's business address, telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently;***
  - (c) the ***total*** price inclusive of taxes, or where the nature of the product ***good or service*** means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges ***and any other cost*** or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; ***in the case of an open-ended contract, the total price shall mean the total monthly costs;***
  - (d) ***when appropriate***, the arrangements for payment, delivery, performance, ***the date by which the trader undertakes to deliver the goods or to provide the service*** and the ***trader's*** complaint handling policy, ~~if they depart from the requirements of professional diligence;~~
  - (e) the existence of a right of withdrawal, where applicable;
  - (f) ***in addition to a reminder of the existence of a legal guarantee of conformity for goods***, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
  - (fa) ***the existence of codes of conduct and how they can be obtained, where applicable;***
  - (g) the duration of the contract where applicable or if the contract is open-ended ***or is to be extended automatically***, the conditions for terminating the contract;
  - (h) the minimum duration of the consumer's obligations under the contract, where applicable;
  - (i) ***where applicable***, 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.
  - (ia) ***the application of technical protection measures for digital content, where applicable;***
  - (ib) ***any interoperability of digital content with hardware and that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where applicable;***
  - (ic) ***the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.***
2. ~~In the case of a public auction, the information in paragraph 1(b) may be replaced by the geographical address and the identity of the auctioneer. Paragraph 1 shall not be~~

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*applicable to contracts for the delivery of a good or the provision of a service, which involve day-to-day transactions and in which the trader has to deliver the good or provide the service immediately when the contract is concluded.*

3. ~~The information referred to in paragraph 1 shall form an integral part of the sales or service contract. Member States may adopt or maintain additional pre-contractual information requirements.~~

## *Article 6*

### *Failure to provide information*

1. If the trader has not complied with the information requirements on additional charges as referred to in Article 5(1)(c), the consumer shall not pay these additional charges.
2. Without prejudice to Articles ~~7(2)~~, 13 and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective **and proportionate** ~~contract law~~ remedies for any breach of Article 5.

## *Article 7*

### *Specific information requirements for intermediaries*

- ~~1. Prior to the conclusion of the contract, the intermediary shall disclose to the consumer, that he is acting in the name of or on behalf of another consumer and that the contract concluded, shall not be regarded as a contract between the consumer and the trader but rather as a contract between two consumers and as such falling outside the scope of this Directive.~~
- ~~2. The intermediary, who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.~~
- ~~3. This Article shall not apply to public auctions.~~

## **Chapter III**

### **Consumer information and withdrawal right for distance and off-premises contracts**

## *Article 8*

### *Scope*

~~This Chapter shall apply to distance and off-premises contracts.~~

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## Article 9

### *Pre-contractual information requirements for distance and off-premises contracts*

1. ***In good time before the consumer is bound by any ~~As regards distance or off-premises contracts contract or any corresponding offer~~, the trader or the person acting on his behalf shall provide the consumer with the following information in a clear and intelligible manner: which shall form an integral part of the contract:***
  - (a) ***the main characteristics of the good or service, to the extent appropriate to the medium and the good or service; ~~the information referred to in Articles 5 and 7 and, by way of derogation from Article 5(1)(d), the arrangements for payment, delivery and performance in all cases;~~***
  - (b) ***the identity of the trader, such as his trading name; ~~where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;~~***
    - (ba) ***the trader's business address, telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently;***
  - (c) ***the total price inclusive of taxes, or where the nature of the good or service means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges and any other cost or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; in the case of an open-ended contract, the total price shall mean the total monthly costs; ~~if different from his geographical address, the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;~~***
  - (d) ***the existence of codes of conduct and how they can be obtained, where applicable; ~~the arrangements for payment, delivery, performance, the date by which the trader undertakes to deliver the goods or to perform the service and the trader's complaint handling policy;~~***
  - (e) ***the possibility of having recourse to an amicable dispute settlement, where applicable; ~~in so far as a right of withdrawal exists, the conditions, period and procedure for exercising that right including the eventual costs of return of the goods for the consumer; for this purpose, 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), or any other clearly worded statement; if the trader informs the consumer using the model instructions on withdrawal in Annex I(A), he shall be deemed to have satisfied the information requirements laid down in this Article concerning the right of withdrawal;~~***
    - (ea) ***where a right of withdrawal does not apply in accordance with Article 19(1), the information that the consumer cannot exercise a right of withdrawal;***

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- (f) ~~that the contract will be concluded with a trader and as a result that the consumer will benefit from the protection afforded by this Directive.~~ *in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;*
- (fa) the existence of codes of conduct and how they can be obtained, where applicable;*
- (fb) the duration of the contract where applicable, or if the contract is open-ended or is to be extended automatically, the conditions for terminating the contract;*
- (fc) the minimum duration of the consumer's obligations under the contract, where applicable;*
- (fd) 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;*
- (fe) the application of technical protection measures for digital content, where applicable;*
- (ff) 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;*
- (fg) the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.*
2. *In the case of a public auction, the information referred to in points (b), (ba) and (c) of paragraph 1 may be replaced by the equivalent details for the auctioneer.*
3. *The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract.*
- 3a. *Member States shall not impose any other requirements on the content of the model instructions on withdrawal set out in Annex I(A).*
- 3b. *For distance and off-premises contracts relating to transport services or health and safety requirements, Member States may adopt or maintain provisions of national law laying down additional pre-contractual information requirements provided that they are compatible with the Treaty on the Functioning of European Union and that such requirements are appropriate for the proper information of the consumer.*
- 3c. *Member States may adopt or maintain additional pre-contractual information requirements for all distance and off-premises contracts for the provision of services for which, pursuant to Article 22(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>19</sup>, they impose additional information requirements applicable to providers established in their territory.*

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<sup>19</sup> OJ L 376, 27.12.2006, p. 36.

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- 3d. *Article 5 shall be without prejudice to Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market<sup>20</sup>.*
- 3e. *As regards compliance with the information requirements referred to in this Chapter, the burden of proof shall be upon the trader.*

## Article 10

### *Formal pre-contractual information requirements for off-premises contracts*

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given ~~in the order form~~ **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 order form shall include the standard withdrawal form set out in Annex I(B).~~ **The consumer may in any event request that the information be provided on paper.**
2. An off-premises contract shall only ~~be~~ **become** valid if the consumer **has signed** ~~signs~~ an order form and ~~in cases where the order form is not on paper, receives a copy of the order form on another durable medium.~~
3. Member States shall not impose any **further** formal **pre-contractual information** requirements ~~other than those provided for in paragraphs 1 and 2~~ **for the fulfilment of the information obligations referred to in Article 9(1).**

## Article 11

### *Formal pre-contractual information requirements for distance contracts*

1. With respect to distance contracts, the information provided for in Article 9(a) shall be given or made available to the consumer **on a durable medium** ~~prior to the conclusion of the contract~~, in plain and intelligible language and **shall** be legible, in a way appropriate to the means of distance communication used.
- 1a. **If a distance contract for the provision of services places the consumer under an obligation to make a payment, the consumer shall be bound by the contract only if:**
  - (a) **the trader has made the consumer aware in a clear and prominent manner of the total price, including all related price components; and**
  - (b) **for contracts concluded on the Internet, the trader has designed his website in such a way that a binding order cannot be placed until the consumer has confirmed that he has read and understood the information required under point (a); or**
  - (c) **for contracts concluded on the telephone, the trader has sent the consumer a confirmation of his offer on a durable medium and the consumer has confirmed the conclusion of the contract on a durable medium.**

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<sup>20</sup> OJ L 178, 17.7.2000, p. 1.

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2. If the trader *or an intermediary acting on behalf of the trader* makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.
- 2a. *Trading websites shall indicate clearly and legibly on their homepage whether there are restrictions of any kind – including on means of payment – regarding delivery to certain Member States.*
3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least, *on that particular medium prior to the conclusion of such a contract*, the *pre-contractual* information regarding the main characteristics of the ~~product~~ *good or service*, ~~and the total price~~ *the duration of the contract and, if the contract is open-ended, the conditions for terminating the contract* referred to in Articles ~~5~~ *9(1)(a), (b), and (c), (e) and (g)*. ~~on that particular medium prior to the conclusion of such a contract.~~ The other information referred to in ~~Articles 5 and 7~~ *Article 9* shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.
- ~~4. The consumer shall receive confirmation of all the information referred to in Article 9(a) to (f), on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.~~
4. Member States shall not impose any *further* formal *pre-contractual information* requirements ~~other than those provided for in paragraphs 1 to 4~~ *for the fulfilment of the information obligations referred to in Article 9(1)*.

## Article 12

### *Length and starting point of the withdrawal period*

1. The consumer shall have a period of fourteen days to withdraw from a distance or off-premises contract, without giving any reason.
- 1a. *In the case of a distance or off-premises contract, the withdrawal period referred to in paragraph 1 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.*
2. *Notwithstanding paragraph 1, in the case of an distance or off-premises contract for the delivery of goods, the withdrawal period shall begin from the day on which when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium.*  
~~In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered or:~~

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- (a) *in the case of multiple goods ordered by the consumer in one order and delivered separately, of the last good delivered;*
- (b) *in the case of a good consisting of multiple lots or pieces, of the last lot or piece;*
- (c) *in the case of the recurring delivery of goods of the same kind during a defined period of time, of the first good delivered.*

~~In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.~~

- 3. The deadline referred to in paragraph 1 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that ~~deadline~~ *period*.
- 4. The Member States shall not prohibit the parties from performing their *contractual* obligations ~~under the contract~~ during the withdrawal period. *Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during a given period after the conclusion of the contract.*

## Article 13

### *Omission of information on the right of withdrawal*

- 1. If the trader has not provided the consumer with the information on the right of withdrawal in breach of ~~Articles 9(b), 10(1) and 11(4)~~ *point (e) of Article 9(1)*, the withdrawal period shall expire ~~three months after the trader has fully performed his other contractual obligations~~ *one year from the end of the initial withdrawal period, as determined in accordance with Article 12(1a) and (2)*.
- 1a. *Nevertheless, Member States may maintain existing national legislation providing for a longer period of expiration of the withdrawal period.*

## Article 14

### *Exercise of the right of withdrawal*

- 1. *Before expiry of the withdrawal period*, the consumer shall inform the trader of his decision to withdraw ~~on a durable medium either in a statement addressed to the trader drafted in his own words or using the standard withdrawal form as set out in Annex I(B).~~ *For this purpose, the consumer may either:*
  - (a) *use the model withdrawal form as set out in Annex I(B) or make any other clearly worded statement on a durable medium; or*
  - (b) *return the goods to the trader, accompanied by a clearly worded statement by the consumer setting out his decision to withdraw.*

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Member States shall not provide for any other formal requirements applicable to ~~this standard~~ **the model** withdrawal form **other than those set out in Annex I(B)**.

- ~~For distance contracts concluded on the Internet,~~ The trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit ~~the standard~~ **either the model withdrawal form set out in Annex I(B) or any other clearly worded statement** on the trader's website. **The trader may also give the option to the consumer of withdrawing from the contract by telephone.** In these cases the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal ~~by email~~ **on a durable medium** without delay.

## Article 15 Effects of withdrawal

The exercise of the right of withdrawal shall terminate the obligations of the parties:

- to perform the distance or off-premises contract, or
- to conclude ~~an~~ **the distance or** off-premises contract, in cases where an offer was made by the consumer.

## Article 16 Obligations of the trader in case of withdrawal

- The trader shall reimburse any payment received from the consumer ~~within thirty,~~ **including, if applicable, the costs of delivery, without undue delay, and in any event not later than fourteen** days from the day on which ~~he receives the communication of withdrawal.~~ **is informed of the consumer's decision to withdraw in accordance with Article 14. The trader may carry out such reimbursement by any means of payment, which is legal tender in the country where the consumer receives it and provided that the consumer does not incur any fees as a result of the reimbursement.**
- Notwithstanding paragraph 1, the trader shall not be required to reimburse additional delivery costs, if the consumer has expressly opted for a type of delivery other than a standard delivery.** ~~For sales contracts, the trader may withhold the reimbursement until he has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest.~~

## Article 17 Obligations of the consumer in case of withdrawal

- For sales **distance or off-premises** contracts for **the supply of goods** ~~which the material possession of the goods has been transferred to the consumer or at his request, to a third party before the expiration of the withdrawal period,~~ the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, ~~within~~ **without undue delay and in any event not later than** fourteen days from the

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day on which he communicates his ~~withdrawal~~ **decision to withdraw** to the trader **in accordance with Article 14**, unless the trader has offered to collect the goods himself.

The consumer shall only be charged for the direct cost of returning the goods. ~~unless~~ **He shall not be charged for that cost if** the trader has agreed **in the contract** to bear ~~that cost~~ **it or the price of the goods to be returned is more than EUR 40**.

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ~~ascertain~~ **establish** the nature, **qualities** and functioning of the goods. **The consumer** He shall **in any event** not be liable for **any** diminished value **of the goods** where the trader has failed to provide notice of the **right of withdrawal** ~~withdrawal right~~ in accordance with **point (e) of Article 9(1)**. ~~Article 9(b). For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.~~
- 2a. **Except as provided for in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.**

## Article 18

*Effects of the exercise of the right of withdrawal on ~~ancillary~~ **linked** contracts*

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any ~~ancillary~~ **linked** contracts shall be automatically terminated, without any costs for the consumer **that are not provided for in this Directive**.
2. The Member States shall lay down detailed rules on the termination of such contracts.

## Article 19

*Exceptions from the right of withdrawal*

1. In respect of distance **and off-premises** contracts, the right of withdrawal shall not apply as regards the following:
  - (a) services where performance has begun, with the consumer's prior express consent **on a durable medium**, before the end of the fourteen day period referred to in Article 12; **in such cases, the consent should also extend to waiving the consumer's right of withdrawal;**
  - (b) the supply of goods or services for which the price is dependent on fluctuations in the ~~financial~~ market which cannot be controlled by the trader **and which may occur within the withdrawal period;**
  - (c) the supply of goods made **or services provided** to the consumer's specifications or clearly personalized, **requiring the trader to make individual arrangements which he can make no other use of,** or which are liable to deteriorate or expire rapidly;
  - (d) the supply of wine, ~~the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place beyond~~

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~~the time limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;~~

~~- foodstuffs,~~

~~- beverages,~~

~~- pharmaceuticals, or~~

~~- or other hygienically sensitive goods, whose packaging or sealing has already been opened by the consumer, after having been previously informed about the exclusion of the right of withdrawal;~~

~~(da) contracts in respect of which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional goods or services;~~

~~(db) contracts for which the consumer has specifically requested the trader to visit him at home for the purpose of carrying out repairs or maintenance; if on the occasion of such a visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;~~

~~(e) the supply of sealed audio or *sealed* video recordings or computer software which were unsealed by the consumer;~~

~~(f) the supply of newspapers, periodicals and magazines *with the exception of subscription contracts for the supply of such publications*;~~

~~(g) gaming and lottery services;~~

~~(h) contracts concluded at an *a public* auction.~~

~~(ha) *the supply of digital content once the consumer has started to download that digital content.*~~

~~2. In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:~~

~~(a) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;~~

~~(b) contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this~~

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~~occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;~~

~~(e) contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.~~

3. The parties *trader and the consumer* may agree not to apply paragraphs 1 and 2.

## *Article 20*

### *Excluded distance and off-premises contracts*

~~1. Articles 8 to 19 shall not apply to distance and off-premises contracts:~~

~~(a) for the sale of immovable property or relating to other immovable property rights, except for rental and works relating to immovable property;~~

~~(b) concluded by means of automatic vending machines or automated commercial premises;~~

~~(c) concluded with telecommunications operators through public payphones for their use;~~

~~(d) for the supply of foodstuffs or beverages by a trader on frequent and regular rounds in the neighbourhood of his business premises.~~

~~2. Articles 8 to 19 shall not apply to off-premises contracts relating to:~~

~~(a) insurance,~~

~~(b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC<sup>21</sup> and~~

~~(c) credit which falls within the scope of Directive 2008/48/EC.~~

~~3. Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.~~

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<sup>21</sup> OJ L 271, 09.10.2002, p. 16.

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## Chapter IV

### Other consumer rights specific to sales contracts

#### ~~Article 21~~

##### ~~Scope~~

- ~~1. This Chapter shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed purpose contract having as its object both goods and services, this Chapter shall only apply to the goods.~~
- ~~2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.~~
- ~~3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.~~
- ~~4. Member States may decide not to apply this Chapter to the sale of second hand goods at public auctions.~~

#### Article 22

##### Delivery

- ~~1. Unless the parties have *not* agreed otherwise, **on the time of delivery**, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, **indicated by the consumer and** other than the carrier ~~and indicated by the consumer~~, **as soon as possible but not later than** within a maximum of thirty days from the day of the conclusion of the contract.~~
2. Where the trader has failed to fulfil his obligations to deliver **the goods at the time agreed on with the consumer, or in accordance with paragraph 1**, the consumer shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1. **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 sales contract.**

**Notwithstanding the first subparagraph, 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.**

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- 2a. *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.*
- 2b. *This Article shall be without prejudice to the right of the consumer to claim damages.*

## *Article 22a*

### *Right to delivery of goods to or supply of services in another Member State*

*In the case of a distance contract, the consumer shall be entitled to require the trader to supply the goods to or deliver 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.*

## *Article 22b*

### *Means of payment*

1. *The trader and consumer may agree on an advance payment or a deposit on delivery.*
2. *In accordance with Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market<sup>22</sup>, Member States may prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments.*
3. *Member States shall prohibit traders 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.*

## *Article 23*

### *Passing of risk*

1. *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, ~~and indicated by the consumer~~ has acquired the material possession of the goods. **The risk shall pass to the consumer upon delivery to the carrier, if the carrier was commissioned to carry the goods by the consumer and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.***
2. *The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated*

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<sup>22</sup> *OJ L 319, 5.12.2007, p. 1*

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by the consumer has *manifestly* failed to take reasonable steps to acquire the material possession of the goods.

## Article 23a

### Duration of contracts

1. *Without prejudice of the provisions of this Directive on unfair terms, contracts concluded between consumers and traders shall not stipulate an initial commitment period of more than 12 months.*
2. *At the end of the initial 12 months commitment period, consumers shall be entitled to terminate the contract at any time. Termination of the contract shall be subject to a period of prior notice, which shall not exceed two months. Consumers shall be entitled to give such prior notice before the end of the initial commitment period in order to terminate the contract with effect from the end of that period.*

## Article 24

### Conformity with the contract

1. The trader shall deliver the goods in conformity with the sales contract, *in particular as regards quality and quantity, that were jointly agreed upon by the parties.*
2. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:
  - (a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model; *and*
  - (b) they are fit, *in the absence of an agreement on their characteristics*, for ~~any particular~~ *the purpose for which the parties to the contract intended them* ~~for which the consumer requires them and which he made known to the trader at the time of the conclusion of the contract and which the trader has accepted;~~ *and*
  - (c) they are fit for the purposes for which goods of the same type ~~are~~ *would* normally *be* used ~~or~~ *and* ~~(d)~~ they show the quality and performance which are normal in goods of the same type, *taking into account inter alia the purpose, the appearance, the durability and the finish*, and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.
3. There shall be no lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or ~~should~~ *could not* reasonably have been ~~aware~~ *unaware* of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

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4. The trader shall not be bound by public statements, as referred to in paragraph 2(d) if he shows that one of the following situations existed:
  - (a) he was not, and could not reasonably have been, aware of the statement in question;
  - (b) by the time of conclusion of the contract the statement had been corrected ***in due time and in a manner equivalent to that in which it was made or at least prominently in the contract document***;
  - (c) the decision to buy the goods could not have been influenced by the statement.
5. ***The trader shall be liable for any lack of conformity arising as a result of the packaging or*** resulting from the incorrect installation ~~of the goods shall be considered as a lack of conformity of the goods~~ where the installation forms part of the sales contract ***for the goods***, and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

## Article 25

### *Legal rights – Liability for lack of conformity*

The trader shall be liable to the consumer for any lack of conformity which exists at the time the risk passes to the consumer.

## Article 26

### *Remedies for lack of conformity*

1. As provided for in paragraphs 2 to 5, where the goods do not conform to the contract, the consumer is entitled ***either*** to:
  - (a) have the lack of conformity remedied by repair or replacement, ***in accordance with paragraphs 2, 3 and 5, or to***
  - (b) ~~have the price reduced,~~ ***a reasonable reduction in price or rescission of the contract in accordance with paragraphs 4, 5 and 5a.***
  - (c) ~~have the contract rescinded.~~
2. The ~~consumer may first require the trader to~~ trader shall remedy the lack of conformity by either repair ***the goods*** or ***to replace them if such a remedy is not impossible or disproportionate*** replacement according to his choice.
3. ~~Where the trader has proved that remedying the lack of conformity by repair or replacement is unlawful, impossible or would cause the trader a~~ ***Either of the remedies provided for in paragraph 2 shall be deemed*** disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it ***would*** imposes costs on ***the trader which*** him which, in comparison

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~~with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods if there was no lack of conformity and the significance of the lack of conformity~~

*(a) in the light of what would be the value of the goods if there were no lack of conformity,*

*(b) taking into account the significance of the lack of conformity,*

*(c) upon consideration of the question as to whether use could be made of other remedies (repair or replacement) without significance inconvenience for the consumer,*

*would be unreasonable by comparison with the alternative remedy (repair or replacement). Repair or replacement shall take place within a reasonable time and without significant inconvenience for the consumer.*

~~The consumer may only rescind the contract if the lack of conformity is not minor.~~

4. *Without prejudice to paragraph 5(b), the consumer may resort to any remedy available under paragraph 1, insist on a reasonable reduction in price or rescission of the contract, where one of the following situations exists:*

*(a) the consumer is entitled neither to repair nor replacement;*

*(aa) the trader has implicitly or explicitly refused explicitly or by his conduct to remedy the lack of conformity;*

*(b) the trader has failed to remedy the lack of conformity within a reasonable time;*

*(c) the trader has tried to remedy remedied the lack of conformity, causing significant inconvenience to the consumer.*

~~*(d) the same defect has reappeared more than once within a short period of time.*~~

5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods or the purpose for which the consumer acquired the goods as provided for by *requires them within the meaning of* Article 24(2)(b).

*5a. The consumer shall not be entitled to have the sales contract rescinded if the lack of conformity is minor.*

*5b. Member States may adopt or maintain provisions of national law giving consumers, in the event of lack of conformity, the right for a short period to terminate the contract and receive a full refund or a free choice from among the remedies referred to in paragraph 1, in order to ensure a higher level of consumer protection.*

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## *Article 27 Costs and damages*

1. The consumer shall be entitled to have the lack of conformity remedied free of any cost.
2. ***In accordance with the provisions of applicable national law, and*** without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

## *Article 27a Right of recourse*

***Where the trader, as final seller, is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the trader, as final seller, may pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the trader, as final seller, may pursue remedies, together with the relevant actions and procedure, shall be determined by national law, in such a way as to ensure the effectiveness of that right.***

***A person established as being liable within the meaning of the previous paragraph shall have the burden of providing an absence of responsibility for the lack of conformity, or that the remedy made by the final seller for the consumer was not in fact required.***

## *Article 28 Time limits and burden of proof*

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.
- ~~2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the material possession of the replaced goods.~~
- ~~3.2.~~ In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.
- ~~4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.~~
- ~~5.3.~~ Unless proved otherwise, any lack of conformity which becomes apparent within six months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.
- 3a. Member States may adopt or maintain provisions of national law providing for a longer liability period, a longer period for reversal of the burden of proof in the consumer's***

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*favour or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of consumer protection.*

## *Article 28a*

### *Communication and contactability*

*The trader shall ensure that throughout the duration of a service contract, or, following the conclusion of a contract of sale, until the time limit referred to in Article 28(1) for formal offers, notifications and questions by the consumer relating to rights and obligations under the service contract or contract of sale has expired, he can be contacted under reasonable conditions. In particular, he shall ensure that formal offers by the consumer in respect of the contract reach him without delay and that the consumer is notified of their receipt immediately. The cost of receiving and dealing with formal offers, notifications and questions concerning the service contract or the contract of sale by telephone may not be charged to the consumer; the right of the telecommunications service provider to charge for such calls shall not be affected.*

## *Article 29*

### *Commercial guarantees*

1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of the guarantee statement, the commercial guarantee shall be binding under the conditions laid down in the advertising on the commercial guarantee.
2. The guarantee statement shall be drafted in plain intelligible language, ~~and~~ be legible **and in the same font size**. It shall ~~include~~ **be written in the same language as the contract**. *The guarantee statement shall* the following:
  - (a) legal rights of the consumer, ~~as provided for in~~ **under Articles 26 and 28 and the provisions of applicable national law, as well as** ~~and~~ a clear statement that those rights are not affected by the commercial guarantee,
  - (b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,
  - (c) ~~without prejudice to Articles 32 and 35 and Annex III(1)(j), set out, where applicable,~~ **the information** that the commercial guarantee ~~cannot~~ **can** be transferred to a subsequent buyer.
3. ~~If the consumer so requests,~~ The trader shall make the guarantee statement available in a durable medium **and, if so requested by the consumer, also on paper**.
4. Non-compliance with paragraph 2 or 3 shall not affect the validity of the guarantee.

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## Chapter V (cf *JURI Amendments*)

### Consumer rights concerning contract terms

#### *Article 30*

##### *Scope*

1. This Chapter shall apply to contract terms drafted in advance by the trader or a third party, which ***have not been individually negotiated. A term shall always be regarded as not individually negotiated where it has been drafted in advance and*** the consumer ~~agreed~~ ***has therefore not been able to without having influence the possibility substance of influencing their content the term,*** in particular where such contract terms ~~are~~ ***term is*** part of a pre-formulated standard contract.
2. The fact that ~~the consumer had the possibility of influencing~~ the content of certain aspects of a contract term or one specific term ***have been individually negotiated,*** shall not exclude the application of this Chapter to other contract terms which form part of the contract.
3. This Chapter shall not apply to contract terms reflecting ~~mandatory~~ statutory, regulatory ***or ordre public*** provisions, which comply with ~~Community~~ ***Union*** law and the provisions or principles of international conventions to which the ~~Community~~ ***Union*** or the Member States are party.

#### *Article 30 a (new)*

##### *Degree of harmonisation*

***Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.***

#### *Article 31*

##### *Transparency requirements of contract terms*

1. ***All*** contract terms shall be expressed in ***a clear and comprehensible manner. If a contract term is in writing, it must shall always be drafted*** in plain, intelligible language and be legible.
2. Contract terms shall be made available to the consumer in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract, with due regard to the means of communication used.
3. The trader shall seek the express consent of the consumer to any payment in addition to the remuneration foreseen for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which

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the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

4. Member States shall refrain from imposing any ~~presentational~~ requirements ~~as to the way the~~ ~~on~~ the ***presentation of*** contract terms, ***except for presentational requirements in relation to persons with disabilities, or where the goods or services may present a particular risk to the health and safety of the consumer or a third person, or in respect of specific goods or services where there is evidence that demonstrates consumer detriment.*** ~~are expressed or made available to the consumer.~~

## *Article 32 General principles*

1. Where a contract term is not included in Annex II or III, Member States shall ensure that it is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. ~~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 **business** in accordance with Article 31.~~
  - 2a. ***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 business in accordance with Article 31 (1) and 31 (2). A term which has been supplied by the business in breach of the duty of transparency imposed by Article 31(1) and 31(2) may on that ground alone be considered unfair.***
3. Paragraphs 1, 2, and 2(a) of this Article shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that the trader fully complies with Article 31 (1), (2) and (3).

## *Article 33 Burden of proof*

Where the trader claims that a contract term has been individually negotiated, ***or that a contract term is compliant with the transparency requirement laid down in Article 31(1) and 31(2)***, the burden of proof shall be incumbent on him.

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## Article 34

### *Terms considered unfair in all circumstances*

1. Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. ~~That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.~~
2. ***Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances. Member States shall notify to the Commission the contract terms referred to in paragraph 1.***

***The Commission shall make that information public in an easily accessible way.***

## Article 35

### *Terms presumed to be unfair*

1. Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. ~~That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.~~
2. ***Member States may provide in their national legislation for additional contract terms presumed to be unfair. Member States shall notify to the Commission the contract terms referred to in paragraph 1.***

***The Commission shall make that information public in an easily accessible way.***

## Article 36

### *Interpretation of terms*

1. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail.
2. This Article shall not apply in the context of the procedures laid down in Article 38(2).

## Article 37

### *Effects of unfair contract terms*

Contract terms which are unfair ***under this Directive*** shall not be binding on the consumer ***in accordance with national law***. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

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## *Article 38*

### *Enforcement in relation to unfair contract terms*

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the ~~continued~~ use of unfair terms in contracts concluded with consumers by traders.
2. In particular, persons or organisations, having a legitimate interest under national law in protecting consumers, may take action before the courts or administrative authorities for a decision as to whether contract terms drawn up for general use are unfair.
3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from ~~continuing to~~ *the use of* terms which have been found unfair.
4. Member States shall ensure that the legal actions referred to in paragraph 2 and 3 may be directed either separately or jointly depending on national procedural laws against a number of traders from the same economic sector or their associations which use or recommend the use of the same general contract terms or similar terms.

## *Article 39*

### *Review of the terms in Annexes 2 and 3*

- ~~1. Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.~~
- ~~2. In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2).~~

## **Chapter VI**

### **General provisions**

## *Article 40*

### *The Committee*

- ~~1. The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as "the Committee").~~

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~~2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC<sup>23</sup> shall apply, having regard to the provisions of Article 8 thereof.~~

## *Article 41 Enforcement*

1. Member States **and the Commission** shall ensure that adequate and effective means exist to ensure compliance with **consumer rights as ensured in** this Directive.
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 organisations having a legitimate interest in protecting consumers;
  - (c) professional organisations having a legitimate interest in acting.

## *Article 42 Penalties*

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify those provisions to the Commission by the date specified in Article 46 at the latest and shall notify it without delay of any subsequent amendment affecting them.

## *Article 43 Imperative nature of the Directive*

If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by this Directive.

## *Article 44 Information*

Member States **and the Commission** shall take appropriate measures to inform consumers **and traders, especially via information and communication technology tools and public media**, of the

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<sup>23</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

## *Article 45 Inertia selling*

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of ~~a product~~ **as good or provision of a service** prohibited **pursuant to** Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. **In such cases**, the absence of a response from the consumer shall not constitute consent.

## *Article 46 Transposition*

1. Member States shall adopt and publish, by [eighteen months after its entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [two years after its entry into force].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- ~~2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

## *Article 46a*

### *Reporting requirement and mutual evaluation*

1. ***By [the end of the transposition period], and every three years thereafter, Member States shall draw up a report containing the following information:***

***(a) the text of any additional pre-contractual information requirements which Member States adopt or maintain pursuant to Article 9 (3b) and (3c);***

***(aa) the text of any diverging provisions of national law which Member States maintain pursuant to Article 12(4) and Article 13(2);***

***(ab) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 22(2a);***

***(ac) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 26(5b) and Article 28(5a);***

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*(ad) the text of any additional contract terms designated by Member States, pursuant to Article 34(1a), as unfair in all circumstances;*

*(ae) the text of any additional contract terms designated by Member States, pursuant to Article 35(1a), as terms presumed to be unfair;*

*(af) the text of any decisions of fundamental importance – together with the grounds for them – taken by Member States' courts, arbitration bodies or competent administrative authorities in the field covered by this Directive.*

2. *The report referred in paragraph 1 shall be submitted to the Commission. With regard to the information referred to in points (a) to (e) of paragraph 1, Member States shall explain why diverging provisions of national law are appropriate and proportionate with a view to attaining the purposes of the Directive.*
3. *The Commission shall ensure that the information referred to in points (d) and (e) of paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website set up and maintained by the Commission.*
4. *The Commission shall forward the reports provided for in paragraph 1 to the other Member States and the European Parliament, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult stakeholders on those reports.*

## *Article 46b*

### *Reporting by consumer protection agents*

*Persons or organisations having a legitimate interest under national law in protecting consumers, within the meaning of Article 38(2), shall notify the Commission of the conclusions they have reached from the assessment of the application and impact of this Directive on consumer rights and the functioning of the internal market.*

## *Article 46c*

### *Review*

*By [one year after transposition], and every three years thereafter, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, taking account of the information gathered pursuant to Article 46a(4) and Article 46b. If necessary, it shall make legislative proposals, accompanying the report, to adapt this Directive to developments in the field of consumer rights.*

## **Chapter VII** **Final provisions**

### *Article -47*

#### *Amendment of Directive 2002/65/EC*

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*Article 2(a) of Directive 2002/65/EC<sup>1</sup> of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services shall be replaced by the following:*

*(a) 'distance contract' means any contract for the supply of the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer, for the conclusion of the contract, are not simultaneously physically present for the conclusion of the contract, but, rather, make exclusive use of one or more means of distance communication;'*

## *Article 47 Repeals*

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed *as of [date of transposition]*.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

## *Article 48 Review*

~~The Commission shall review this Directive and report to the European Parliament and the Council no later than [insert same date as in the second subparagraph of Article 46(1) + five years].~~

~~If necessary, it shall make proposals to adapt it to developments in the area. The Commission may request information from the Member States.~~

## *Article 48a*

*The Commission shall consider adopting a proposal for a regulation on distance and off-premises contracts, from which transport and health services will be exempted.*

## *Article 49 Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## *Article 50 Addressees*

This Directive is addressed to the Member States.

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Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*

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## ANNEX I INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF WITHDRAWAL

### A. Information to be provided with the Model instructions on withdrawal form

- ~~1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.~~

#### *Right of withdrawal*

- ~~2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:~~

*You may withdraw on a durable medium from this contract within a period of 14 days without giving any reason [or – if the goods are delivered to you before the expiry of this period – by returning the goods].*

- ~~(a) for off premises contracts, within a period of fourteen days following his signature of the order form;~~

*The period for withdrawal shall begin [on receipt of the goods ordered]<sup>1</sup>. The day [on which the goods are received]<sup>2</sup> shall not be counted as part of the period for withdrawal. If the last day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

*The period for withdrawal shall be deemed to have been observed if your notice of withdrawal is sent, or the goods are sent, before its expiry. The sending of either the notice of withdrawal or the goods before the expiry of the withdrawal period must be provable (for example in the form of a postal receipt).*

- ~~(b) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;~~

*Your notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter)<sup>3</sup> to:<sup>4</sup>. The consumer may use the form below, but it is not obligatory.*

- ~~(c) for distance service contracts:~~

#### *Effects of withdrawal*

~~— within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen-day period;~~

*For withdrawal to be valid you must send the goods back, at [our expense]<sup>5</sup>, within a period of 14 days of sending your notice of withdrawal. The period for reimbursement shall begin when we receive your notice of withdrawal or the goods. The day on which we receive the*

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*notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

~~— within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.~~

*If you are unable to return the goods in their original condition, you shall be liable for any diminished value of the goods. This provision shall apply only if the deterioration in value is attributable to the goods having been handled in a manner other than that necessary for ascertaining their nature and how they function. You can prevent deterioration by refraining from using the goods as you would your own property and by avoiding any form of handling liable to reduce their value.*

~~3. For all sales contracts, a statement informing the consumer about the time limits and modalities to send back the goods to the trader and the conditions for the reimbursement in accordance with Articles 16 and 17(2).~~

*In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.*

~~4. For distance contracts concluded on the Internet, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.~~

*We may make reimbursement subject to the condition that we have received the returned goods.*

~~5. A statement that the consumer can use the withdrawal form set out in Part B.~~

## *Advice on alternative wording:*

(1) *In the following specific cases, the text in parentheses should read as indicated:*

*in the case of distance or off-premises contracts for the supply of services: 'from the day of the conclusion of the contract or on the day on which you received a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.*

(2) *In the following specific cases, the text in parentheses should read as indicated: in the case of distance or off-premises contracts for the supply of services: 'the conclusion of the contract or on the day on which you received a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.*

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(3) *In the case of distance contracts, additional text should be inserted as follows:*

*(a) if the trader allows the consumer to withdraw from the contract by e-mail: 'or by e-mail';*

*(b) if the trader allows the consumer to fill in a model form electronically on a website: 'or via our website'.*

(4) *To be inserted: the trader's name and business address. In the case of distance contracts, the following must also be indicated: the e-mail and/or web address of the trader which the consumer can use to withdraw from the contract.*

(5) *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'*

## **B. Model withdrawal form**

(complete and return this form only if you wish to withdraw from the contract)

– To: *(trader's name, business address and, where appropriate, e-mail address)(\*)*

– I/We\*\* hereby give notice that I/We\*\* withdraw from my/our\*\* contract of sale of the following goods\*\*/provision of the following service\*\*

– Ordered on\*/~~received on~~\*\*\*):

*Name(s) of consumer(s) (\*\*\*):*

*Address(es) of consumer(s) (\*\*\*):*

*Consumer(s) "signature(s) (required only if the form is sent on paper) (\*\*\*):*

*Date (\*\*\*):*

*(\*) To be filled in by the trader before providing the form to the consumer*

*(\*\*) Delete as appropriate where non-applicable.*

*(\*\*\*) To be filled in by the consumer(s).*

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## ANNEX II (cf JURI Amendments)

### CONTRACT TERMS WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

Contract terms, which have the object or effect of the following, shall be unfair in all circumstances:

- (a) excluding or limiting the liability of the trader for death or personal injury caused to the consumer through an act or omission of that trader;
- (aa) *excluding or limiting the liability of the business for damage on the property of the consumer caused deliberately or as a result of gross negligence through an act or omission by the trader;***
- b) limiting the trader's obligation to respect commitments undertaken by ~~his~~*its* agents or making ~~his~~*its* commitments subject to compliance with a particular condition, ***the fulfilment of*** which depends exclusively on the trader;
- (c) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions;
- (ca) *conferring exclusive jurisdiction for all disputes arising under the contract to the place where the trader is domiciled unless the chosen court is also the court for the place where the consumer is domiciled;***
- (d) restricting the evidence available to the consumer or imposing on him a burden of proof which, according to the applicable law, should lie with the trader;
- (e) giving the trader the right to determine whether the goods or services supplied are in conformity with the contract or giving the trader the exclusive right to interpret any term of the contract.

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## ANNEX III (cf JURI Amendments)

### CONTRACT TERMS WHICH ARE PRESUMED TO BE UNFAIR

1. Contract terms, which have the object or effect of the following, are presumed to be unfair:
  - (a) excluding or limiting the legal rights of the consumer vis-à-vis the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer of offsetting a debt owed to the trader against a claim which the consumer may have against him;
  - (aa) *makes binding on the consumer an obligation which is subject to a condition the fulfilment of which depends solely on the intention of the trader;***
  - (b) allowing the trader to retain a payment by the consumer where the latter fails to conclude or perform the contract, without giving the consumer the right to be compensated of the same amount if the trader fails to conclude or perform the contract;
  - (c) requiring any consumer who fails to fulfil his obligation to pay damages which significantly exceed the harm suffered by the trader;
  - (ca) *requiring a consumer to purchase ancillary goods or services not advertised in the price of the main contract;***
  - (cb) *applying contingent charges, such as penalties for breaching the contract terms, that are clearly disproportionate to the costs incurred by the trader due to the breach of terms;***
  - (d) allowing the trader to terminate the contract at will where the same right is not granted to the consumer;
  - (da) *excluding or hindering the consumer's right to instruct and authorise a third party to conclude a contract between the consumer and the trader and/or to take steps which are meant to lead to, or facilitate, the conclusion of a contract between the consumer and the trader;***
  - (e) enabling the trader to terminate ~~an open-ended contract~~ ***a contractual relationship of indeterminate duration*** without reasonable notice except where ~~the consumer has committed a~~ ***there are serious breach of contract grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided the supplier is required to inform the other contracting party thereof immediately;***
  - (f) automatically renewing a fixed-term contract where the consumer does not indicate otherwise and has to give a long notice to terminate the contract at the end of each renewal period;

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- (g) ***providing that the price of goods or other assets is to be determined at the time of delivery or supply or allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described;***
  - (h) obliging the consumer to fulfil all his obligations where the trader has failed to fulfil all his obligations;
  - (i) giving the trader the possibility of transferring his obligations under the contract, without the consumer's agreement;
  - (j) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the trader;
  - (k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service ***without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves the right to change the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contractual relationship with immediate effect; neither does it affect terms under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the trader is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship;***
  - (l) unilaterally amending contract terms communicated to the consumer in a durable medium through on-line contract terms which have not been agreed by the consumer.
  - (la) ***allowing a trader, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to withdraw.***
2. ~~Point 1(e) shall not apply to terms by which a supplier of financial service reserves the right to terminate unilaterally an open ended contract without notice, provided that the supplier is required to inform the other contracting party or parties thereof immediately.~~
3. Point 1(g) shall not apply to
- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;

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(b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(c) price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

**(ca) *package travel contracts regulated by Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.***

4. Point 1 **(e), (g) and (k)** shall not apply to

~~(a) terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;~~

~~(b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;~~

(c) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

~~(d) terms under which the trader reserves the right to alter unilaterally the conditions of an open ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.~~

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## ANNEX IV

### Repealed Directives with the list of its successive amendments (referred to in Article 47)

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises OJ L 372, 31.12.1985, p. 31.

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts OJ L 95, 21.4.1993, p. 29.

Directive 97/7/EC of the European Parliament and of the Council OJ L 144, 4.6.1997, p. 19.

Directive 2002/65/EC of the European Parliament and of the Council OJ L 271, 9.10.2002, p. 16

Directive 2005/29/EC of the European Parliament and of the Council OJ L 149, 11.6.2005, p. 29

Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 OJ L 319, 5.12.2007, p. 1

Directive 1999/44/EC of the European Parliament and of the Council OJ L 171, 7.7.1999, p. 12.

ANNEX V

CORRELATION TABLE

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
Article 1 <sup>24</sup>				
	Article 1, paragraph 1 <sup>25</sup>			
	Article 1, paragraph 2 (replaced)			<b>Article 30, paragraph 3</b>
		Article 1 <sup>26</sup>		
			Article 1, paragraph 1 <sup>27</sup>	
			Article 1, paragraph 2 point a (replaced)	<b>Article 2, point 1</b>
			Article 1, paragraph 2 point b <sup>28</sup>	<b>Article 2, point 4</b>
				<b>Article 21, paragraph 3</b>

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<sup>24</sup> Replaced, in substance, by Article 3 and Article 8 read in conjunction with Article 2, point 8.

<sup>25</sup> Replaced, in substance, by Article 1.

<sup>26</sup> Replaced, in substance, by Article 1.

<sup>27</sup> Replaced, in substance, by Article 1.

<sup>28</sup> Amended, in substance, by Article 21 paragraph 4 .

			Article 1, paragraph 2 point c	<b>Article 2, point 2</b>
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<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
			Article 1, paragraph 2 point d	<b>Article 2, point 18</b>
			Article 1, paragraph 2 point e (replaced)	<b>Article 2, point 19</b>
			Article 1, paragraph 2 point f	<b>Deleted</b>
			Article 1, paragraph 3 (replaced)	<b>Article 21, paragraph 4</b>
			Article 1, paragraph 4	<b>Article 21, paragraph 2</b>
Article 2 (replaced)				<b>Article 2, point 1</b>
				<b>Article 2, point 2</b>
	Article 2 point a			<b>Deleted</b>
	Article 2 point b (replaced)			<b>Article 2, point 1</b>
	Article 2 point c (replaced)			<b>Article 2, point 2</b>
		Article 2, paragraph 1 (replaced)		<b>Article 2, point 6</b>
		Article 2, paragraph 2 (replaced)		<b>Article 2, point 1</b>

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
		Article 2, paragraph 3 (replaced)		<b>Article 2, point 2</b>
		Article 2, paragraph 4, 1 <sup>st</sup> sentence (replaced)		<b>Article 2, point 7</b>
		Article 2, paragraph 4 , 2 <sup>nd</sup> sentence		<b>Deleted</b>
		Article 2, paragraph 5		<b>Deleted</b>
			Article 2, paragraph 1	<b>Article 24, paragraph 1</b>
				<b>Article 22</b>
			Article 2, paragraph 2	<b>Article 24, paragraph 2</b>
			Article 2, paragraph 3	<b>Article 24, paragraph 3</b>
			Article 2, paragraph 4	<b>Article 24, paragraph 4</b>
			Article 2, paragraph 5	<b>Article 24, paragraph 5</b>
Article 3, paragraph 1				<b>Deleted</b>

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
Article 3, paragraph 2, point a (replaced)				<b>Article 20, paragraph 1, point a</b>
Article 3, paragraph 2, point b (replaced)				<b>Article 20, paragraph 1, point d</b>
Article 3, paragraph 2, point c (replaced)				<b>Article 12, paragraph 2</b>
Article 3, paragraph 2, point d				<b>Article 20, paragraph 2, point a</b>
Article 3, paragraph 2, point e				<b>Article 20, paragraph 2, point b</b>
Article 3, paragraph 3 <sup>29</sup>				
	Article 3, paragraph 1			<b>Article 32, paragraph 1<sup>30</sup></b>
	Article 3, paragraph 2, 1st subparagraph (replaced)			<b>Article 30, paragraph 1</b>

<sup>29</sup> Replaced in substance by Article 3 and Article 8 read in conjunction with Article 2, point 8.

<sup>30</sup> To be read in conjunction with Article 30, paragraph 1.

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
	Article 3, paragraph 2, 2nd subparagraph			<b>Article 30, paragraph 2</b>
	Article 3, paragraph 2, 3rd subparagraph			<b>Article 33</b>
	Article 3, paragraph 3 (replaced)			<b>Article 34</b>
				<b>Article 35</b>
		Article 3, paragraph 1, 1 <sup>st</sup> indent (replaced)		<b>Article 3, paragraph 2</b>
		Article 3, paragraph 1, 2 <sup>nd</sup> indent		<b>Article 20, paragraph 1, point b</b>
		Article 3, paragraph 1, 3 <sup>rd</sup> indent (replaced)		<b>Article 20, paragraph 1, point c</b>
		Article 3, paragraph 1, 4 <sup>th</sup> indent (replaced)		<b>Article 20, paragraph 1, point a</b>

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
		Article 3 <sup>31</sup> , paragraph 1, 5 <sup>th</sup> indent (replaced)		
		Article 3, paragraph 2, 1 <sup>st</sup> indent (replaced)		<b>Article 20, paragraph 1, point d</b>
		Article 3, paragraph 2, 2 <sup>nd</sup> indent (replaced)		<b>Article 20, paragraph 3</b>
			Article 3, paragraph 1(replaced)	<b>Article 25</b>
				<b>Article 23</b>
			Article 3, paragraph 2 (replaced)	<b>Article 26, paragraph 1</b>
Article 4, 1 <sup>st</sup> sentence (replaced)				<b>Article 9</b>
Article 4, 2 <sup>nd</sup> sentence (replaced)				<b>Article 10</b>
	Article 4, paragraph 1 (replaced)			<b>Article 32, paragraph 2</b>

<sup>31</sup> Partly replaced, by Article 19, paragraph 1, point h.

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
	Article 4, paragraph 2 (replaced)			<b>Article 32, paragraph 3</b>
		Article 4, paragraph 1, point a (replaced)		<b>Article 5, paragraph 1, point b</b>
		Article 4, paragraph 1, point b (replaced)		<b>Article 5, paragraph 1, point a</b>
		Article 4, paragraph 1, point c (replaced)		<b>Article 5, paragraph 1, point c</b>
		Article 4, paragraph 1, point d (replaced)		<b>Article 5, paragraph 1, point c</b>
		Article 4, paragraph 1, point e (replaced)		<b>Article 9, paragraph 1, point a</b>
Article 5, paragraph 1 (replaced)				<b>Article 12</b>
				<b>Article 14</b>
Article 5, paragraph 2 (replaced)				<b>Article 15</b>
				<b>Article 16</b>

<b>Old numbering of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.</b>	<b>Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts</b>	<b>Old numbering of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.</b>	<b>Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees</b>	<b>New numbering in this Directive</b>
				<b>Article 17</b>
	Article 5, 1 <sup>st</sup> sentence (replaced)			<b>Article 31</b>
	Article 5, 2 <sup>nd</sup> and 3 <sup>rd</sup> sentence			<b>Article 36</b>
Article 6 (replaced)				<b>Article 43</b>
	Article 6, paragraph 1			<b>Article 37</b>
	Article 6, paragraph 2			<b>Deleted</b>
Article 7 <sup>32</sup>				
	Article 7, paragraph 1			<b>Article 38, paragraph 1</b>
	Article 7, paragraph 2 (replaced)			<b>Article 38, paragraph 2</b>

<b>Old numbering in the Annex of Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws</b>	<b>To be construed as a reference to</b>
Paragraphs 2, 6, 8 and 11	This Directive

<sup>32</sup> Replaced, in substance, by Article 16 and Article 17.

## LEGISLATIVE FINANCIAL STATEMENT

### 1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council on consumer contractual rights

### 2. ABM / ABB FRAMEWORK

Consumer policy

### 3. BUDGET LINES

#### 3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:

XX0101: for the payment of the officials

XX010211: for the payment of the committee costs

#### 3.2. Duration of the action and of the financial impact:

From 2011 (i.e. year n = 2011), duration not defined

This budget intends to cover the costs of the future Committee on unfair terms in consumer contracts that will be set up as announced in the Directive after the adoption of that Directive by the Parliament and the Council:

1 FTE administrator valued at € 117,000 (according to the specific Guidelines), to support the comitology process.

Costs of the plenary session, with one participant from the 27 Member States. 3 meetings scheduled per year, valued at € 20,000 each. Actual costs of the meetings and frequency of those meetings might need revision, depending on the final shape of the directive, after adoption by council and parliament, and the necessary comitology structures.

#### 3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
XX 0101	Comp	Non-diff <sup>33</sup>	NO	NO	NO	5
XX	Non com	Non-	NO	NO	NO	5

<sup>33</sup> Non-differentiated appropriations hereafter referred to as NDA.

010211		diff <sup>34</sup>				
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<sup>34</sup> Non-differentiated appropriations hereafter referred to as NDA.

## 4. SUMMARY OF RESOURCES

### 4.1. Financial Resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year n (2011)	n + 1 (2012)	n + 2 (2013)	n + 3 (2014)	n + 4 (2015)	n + 5 and later (2016 and later)	Total
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#### Operational expenditure<sup>35</sup>

Commitment Appropriations (CA)	8.1.	a							
Payment Appropriations (PA)		b							

#### Administrative expenditure within reference amount<sup>36</sup>

Technical & administrative assistance (NDA)	8.2.4.	c							
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#### TOTAL REFERENCE AMOUNT

<b>Commitment Appropriations</b>		a+c							
<b>Payment Appropriations</b>		b+c							

#### Administrative expenditure not included in reference amount<sup>37</sup>

Human resources and associated expenditure (NDA)	8.2.5.	d	0.117	0.117	0.117	0.117	0.117	0.117	0.702
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.060	0.060	0.060	0.060	0.060	0.060	0.360

#### Total indicative financial cost of intervention

<b>TOTAL CA including cost of Human Resources</b>		a+c+d+e	0.177	0.177	0.177	0.177	0.177	0.177	1.062
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<sup>35</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>36</sup> Expenditure within article xx 01 04 of Title xx.

<sup>37</sup> Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

<b>TOTAL PA including cost of Human Resources</b>		b+c +d+ e	0.177	0.177	0.177	0.177	0.177	0.177	1.062
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**Co-financing details: not applicable**

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
<b>TOTAL CA including co-financing</b>	a+c +d+ e+f							

4.1.2. *Compatibility with Financial Programming*

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>38</sup> (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. *Financial impact on Revenue*

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] <sup>39</sup>
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

<sup>38</sup> See points 19 and 24 of the Interinstitutional agreement.

<sup>39</sup> Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

**4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.**

<b>Annual requirements</b>	Year n (2011)	n + 1 (2012)	n + 2 (2013)	n + 3 (2014)	n + 4 (2015)	n + 5 and later  (2016 and later)
Total number of human resources	1	1	1	1	1	1

**5. CHARACTERISTICS AND OBJECTIVES**

**5.1. Need to be met in the short or long term**

Not applicable.

**5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy**

Not applicable.

**5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework**

Not applicable.

**5.4. Method of Implementation (indicative)**

***Centralised Management***

directly by the Commission

indirectly by delegation to:

executive Agencies

bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

national public-sector bodies/bodies with public-service mission

***Shared or decentralised management***

with Member states

with Third countries

***Joint management with international organisations (please specify)***

Relevant comments:

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

Regular reporting of the Committee meetings will be ensured and disseminated to the member States and Commission services.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

Not applicable.

#### *6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)*

Not applicable.

#### *6.2.3. Terms and frequency of future evaluation*

An evaluation of the running of the Committee will be done after 5 years.

## **7. ANTI-FRAUD MEASURES**

Not applicable.

## 8. DETAILS OF RESOURCES

### 8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year n (2011)		Year n+1 (2012)		Year n+2 (2013)		Year n+3 (2014)		Year n+4 (2015)		Year n+5 and later (2016 and later)		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 <sup>40</sup> .....																
<b>Action 1: Committee on unfair terms in consumer contracts</b>																
-- Output	N° meetings		3	0.060	3	0.060	3	0.060	3	0.060	3	0.060	3	0.060	18	0.360
- Output 2																
<b>Action 2.....</b>																
- Output 1																
Sub-total Objective 1																

<sup>40</sup>

As described under Section 5.3.

OPERATIONAL OBJECTIVE No.2 1.....																
<b>Action 1.....</b>																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No.n 1																
Sub-total Objective n																
<b>TOTAL COST</b>																

## 8.2. Administrative Expenditure

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )					
		Year n (2011)	Year n+1 (2012)	Year n+2 (2013)	Year n+3 (2014)	Year n+4 (2015)	Year n+5 (2016)
Officials or temporary staff <sup>41</sup> (XX 01 01)	A*/AD	1	1	1	1	1	1
	B*, C*/AST						
Staff financed <sup>42</sup> by art. XX 01 02							
Other staff <sup>43</sup> financed by art. XX 01 04/05							
<b>TOTAL</b>							

### 8.2.2. Description of tasks deriving from the action

Running of the new comitology Committee ("Committee on unfair terms in consumer contracts") established in accordance with Article 39 of this Directive that will work on the implementation of the Directive

Costs of the plenary session, with one participant from the 27 Member States. 3 meetings scheduled per year, valued at € 20,000 each. Actual costs of the meetings and frequency of those meetings might need revision, depending on the final shape of the directive, after adoption by the Council and the Parliament.

The needs for human and administrative resources shall be covered within the allocation that can be granted to the managing DG in the framework of the annual allocation procedure in the light of budgetary constraints.

### 8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure

<sup>41</sup> Cost of which is NOT covered by the reference amount.

<sup>42</sup> Cost of which is NOT covered by the reference amount.

<sup>43</sup> Cost of which is included within the reference amount.

- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>44</sup>							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
<b>Total Technical and administrative assistance</b>							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year n (2011)	Year n+1 (2012)	Year n+2 (2013)	Year n+3 (2014)	Year n+4 (2015)	Year n+5 and later (2016 and later)
Officials and temporary staff (XX 01 01)	0.117	0.117	0.117	0.117	0.117	0.117
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.)  (specify budget line)						
<b>Total cost of Human Resources and associated costs (NOT in reference amount)</b>						

<sup>44</sup> Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation– *Officials and Temporary agents*

Rate of €117,000/ staff used to quantify the costs, as suggested in BUDG guidelines

Calculation– *Staff financed under art. XX 01 02*

[...]

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	Year n (2011)	Year n+1 (2012)	Year n+2 (2013)	Year n+3 (2014)	Year n+4 (2015)	Year n+5 and later (2016 and later)	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences							
XX 01 02 11 03 – Committees	0.060	0.060	0.060	0.060	0.060	0.060	0.360
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
<b>2 Total Other Management Expenditure (XX 01 02 11)</b>	0.060	0.060	0.060	0.060	0.060	0.060	0.360
<b>3 Other expenditure of an administrative nature</b> (specify including reference to budget line)							
<b>Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	0.060	0.060	0.060	0.060	0.060	0.060	0.360

Calculation - *Other administrative expenditure not included in reference amount*

[...]

The needs for human and administrative resources shall be covered within the allocation that can be granted to the managing DG in the framework of the annual allocation procedure in the light of budgetary constraints.