

# European Commission: Communication on the Implementation of the Distance Selling Directive

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The European Commission has issued a Communication on the protection of consumers in respect of distance contracts which reviews how the Distance Selling Directive has been implemented in the 25 EU Member States. It includes a public consultation in the form of a questionnaire to which all interested parties can reply by 21 November 2006. The intended purpose of the Directive was to ensure that consumers buying goods or services via distance selling means enjoy the same protection as those purchasing in a context of face-to-face contact. The Commission is now examining whether the national divergences in transposition deriving from the regulatory options contained in the Directive and the use of the minimum clause (Art. 14) which allows Member States to adopt stricter provisions in view of greater consumer protection, have had an impact on the Internal Market and affected business and consumer confidence in cross-border trade. It also seeks to identify the eventual shortcomings of the Directive in light of new marketing practices and technologies such as internet (e-commerce) and mobile phone commerce (m-commerce). The possible inconsistencies between the different consumer directives currently under review (a total of eight) are also being investigated. The Directive provides a number of consumer rights including:

- Provision of comprehensive information before the purchase;
- Confirmation of that information in a durable medium (such as written confirmation) ;
- Cancellation rights within 7 working days without justification nor costs beyond those of returning the goods (right of withdrawal);
- Refund within 30 days of cancellation;
- Delivery of the goods or performance of the service within 30 days of the order being placed by the consumer;
- Protection from unsolicited selling;
- Protection from fraudulent use of payment cards;

- Non-validity of any waiver of the rights and obligations prescribed by the Directive.

Art. 3 of the Directive limits its scope of application by excluding certain types of contracts from all or some of its provisions. The exceptions include contracts for financial services and contracts concluded through an auction (contracts for financial services are covered by the Distance Marketing of Financial Services Directive).

Other types of contracts are excluded from some of the Directive's provisions, such as the provision of comprehensible information before the purchase and the right to cancel the contract. These include contracts for services to be performed on a specific date or within a specific period such as hotel room bookings, travel or concert tickets. There are also some exemptions from the right of withdrawal. These apply unless the consumer and supplier agree otherwise. These exemptions include, for instance, perishable goods.

The Communication pinpoints a number of difficulties arising from some of these contracts. For example, it observes that the increasingly popular online auctions have led to rising consumer complaints. It states: "where originally websites such as eBay were geared towards C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods." It goes on to explain that it is "aware of national case law on whether websites such as eBay amount to auction houses and are therefore exempted from the Directive" and concludes: "The transposition checks have confirmed the need to look at the meaning of 'auction' in national laws".

The requirements relating to the provision of information prior to the purchase, as prescribed in Art. 4, are also taken as an example to illustrate interpretation difficulties. But where this article is concerned, the Commission observes, in particular, that a significant number of Member States have not expressly transposed the good faith requirement it contains and/or make no express reference to the protection of certain types of consumers, including minors.

The outcome of the public consultation and the results of the review will serve as guidelines to assess the need for further legislative action in the field of distance selling.

***Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the implementation 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, 21 September 2006***

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