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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights

{SEC(2008) 2544}
{SEC(2008) 2545}
{SEC(2008) 2547}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The proposal is a result of the review of the Consumer Acquis which covers a number of Directives on consumer protection.

The Review was launched in 2004 with the objective to simplify and complete the existing regulatory framework. The overarching aim of the Review is to achieve a real business-to-consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect of the principle of subsidiarity.

The Directives under review contain minimum harmonisation clauses meaning that Member States may maintain or adopt stricter consumer protection rules. Member States have made extensive use of this possibility. The outcome is a fragmented regulatory framework across the Community which causes significant compliance costs for businesses wishing to trade cross-border.

The conflict-of-law rules like those included in the Regulation on the law applicable to contractual obligations ("Rome I") do not address this problem. Under Rome I, consumers contracting with a foreign trader cannot be deprived of the protection stemming from the non-derogable rules of their home country.

The internal market effects of the fragmentation are a reluctance by businesses to sell cross-border to consumers which in turn reduces consumer welfare. If consumers are precluded access to competitive cross-border offers they do not fully reap up the benefits of the internal market in terms of more choice and better prices.

The level of consumer confidence in cross-border shopping is low. One of the causes of this phenomenon is the fragmentation of the Consumer Acquis. The fragmentation and the related uneven level of consumer protection make it difficult to conduct pan-European education campaigns on consumer rights and to carry out alternative dispute resolution mechanisms.

The objective of the proposal is to contribute to the better functioning of the business-to-consumer internal market by enhancing consumer confidence in the internal market and reducing business reluctance to trade cross-border. This overall objective should be attained by decreasing the fragmentation, tightening up the regulatory framework and providing consumers with a high common level of consumer protection and adequate information about their rights and how to exercise them. To this end, the European Commission will put in place a process in order to look for the most appropriate way to inform consumers on their basic rights at the point of sale.

- **General context**

The costs incurred by business to comply with the fragmented Consumer Acquis are significant. Surveys have shown that for the majority of traders, such compliance costs constitute an important barrier to cross-border trade which reduces their incentive to sell cross-border, particularly to consumers in small Member States. If no legislative action is taken at Community level, such costs will continue to be passed on to consumers in the form of higher prices or, worse, businesses will continue to refuse to

sell cross-border or create geographical discriminations between consumers depending on their country of residence.

The European Parliament, in its Resolution of 16 July 2007 recommended that legislative action is taken and expressed its preference for the adoption of an instrument taking the form of a horizontal Directive based on full targeted harmonisation.

In its Communication 'A single market for 21st century Europe' of 20 November 2007, the Commission stated that the single market needs to deliver better results and tangible benefits for consumers and SMEs.

- **Existing provisions in the area of the proposal**

The proposal aims at revising Directive 85/577/EEC on contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on distance contracts, Directive 1999/44/EC on consumer sales and guarantees. These four Directives provide for consumer contractual rights.

The proposal merges these four Directives into a single horizontal instrument regulating the common aspects in a systematic fashion, simplifying and updating the existing rules, removing inconsistencies and closing gaps.

The proposal moves away from the minimum harmonisation approach followed in the four existing Directives (i.e. Member States may maintain or adopt stricter national rules than those laid down in the Directive) to embrace a full harmonisation approach (i.e. Member States cannot maintain or adopt provisions diverging from those laid down in the Directive).

- **Consistency with the other policies and objectives of the Union**

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market contains some basic information requirements which have to be fulfilled by traders before contract conclusion. Directives 85/577/EEC, 97/7/EC and 99/44/EEC also contain some information requirements. In line with the Better Regulation objective, the proposal ensures consistency between these various Directives and regulates the legal consequences of a failure to comply with such requirements.

The proposal achieves a high level of consumer protection in consumer contracts. Therefore, the proposal complies with fundamental rights, in particular Article 38 of the Charter of Fundamental Rights of the European Union.

The proposal also complies with the fundamental principles of the EC Treaty, such as the principles of the free movement of goods and the freedom to provide services which will not be restricted by stricter national rules in the field harmonised by the Directive, except for the necessary and proportionate measures which Member States may take on grounds of public policy, public security, public health or the protection of the environment, in accordance with Community law.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

• Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

On 8 February 2007, the Commission adopted the Green Paper on the Review of the Consumer Acquis, summarising the Commission's initial findings and initiating a public consultation focusing on the cross-cutting issues (i.e. the horizontal issues) of the Directives under review.

The Green Paper attracted responses from a wide range of stakeholders, i.e. business, consumer, European Parliament, Member States, academics and legal practitioners.

The Commission also published two consultation documents on Directive 97/7/EC and on Directive 85/577/EEC focusing on the specific issues (i.e. the vertical issues) pertaining to these Directives. All interested parties were invited to submit replies to the Commission, respectively by 21 November 2006 and 4 December 2007. The Commission received respectively 84 and 62 replies from all relevant stakeholders. The outcome of these two specific consultations is available at the website: http://ec.europa.eu/consumers/rights/gen_rights_en.htm

The Commission held a full-day stakeholder conference on 14 November 2007.

On 20 December 2007, two questionnaires (the first one targeted at businesses, the second one targeted at consumers) were sent out by the Commission's contractor to stakeholders.

The current problems and the envisaged legislative changes with different options have been discussed with business and consumer stakeholders who were invited to answer questions on the likely impacts of each option in the context of workshops held in February 2008.

Summary of responses and how they have been taken into account

The majority of respondents to the Green Paper called for the adoption of a horizontal legislative instrument applicable to domestic and cross-border transactions, based on full targeted harmonisation; i.e. targeted at the issues raising substantial barriers to trade for business and/or deterring consumers from buying cross-border. The horizontal legislative instrument should in the view of most respondents be combined with vertical revisions of the existing sector-specific directives (for example revision of the Timeshare and Package Travel Directives). There was a strong support for tightening-up and systematising the Consumer Acquis, e.g. introducing common definitions of consumers/traders and delivery, harmonised rules on information and withdrawal rights and the insertion at Community level of a "black" list of unfair contract terms (i.e. terms banned upfront) and a "grey" list of such terms (i.e. terms presumed to be unfair) instead of the current purely indicative list.

This Green Paper consultation was conducted over the internet from 08/02/2007 to 15/05/2007. The Commission received 307 responses. The results are available on http://ec.europa.eu/consumers/rights/cons_acquis_en.htm.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Six options have been subject to an impact assessment. All policy options take into account, as a baseline, the recently-adopted Rome I.

Policy Option 1 is the status quo option, meaning that the minimum harmonisation of the Consumer Acquis is maintained. The economic impact of this option is negative. The key problem of the fragmentation of the regulatory framework would persist.

Policy Option 2 is a non-legislative option consisting of Community funding for awareness raising campaigns and self-regulation. As a standalone package, it would not bring any positive impact since the key problem of legal fragmentation would remain, unless the codes of conduct were based on the highest common standards and covered the whole Community.

Policy Option 3 includes a total of 4 legislative proposals, based on full harmonisation and which could fit in a horizontal instrument. It focuses on a limited number of inconsistencies in Community legislation. Clearer and up to date definitions simplify the legislation but have very limited impact on the contribution to the better functioning of the internal market, minimising the burden on business and enhancing consumer confidence.

Policy Option 4 includes 16 legislative changes based on full harmonisation and combined with the four legislative changes proposed under Policy Option 3. It addresses all the relevant consumer protection issues which traders have to take into account when designing their marketing materials, drafting their standard contract terms and operating their business with consumers. The full harmonisation of those issues would considerably reduce the administrative costs for distant and direct traders selling cross-border and would have a positive impact on the functioning of the internal market. Such legislative changes are relevant for consumer confidence in cross-border shopping. Furthermore, this Policy Option includes an update of the legislation to new market developments. This Policy Option has positive economic impacts, enhance consumer confidence and improve the quality of legislation.

Policy Option 5 includes 3 legislative proposals based on full harmonisation and granting new consumer rights in addition to the 20 legislative changes proposed under Policy Options 3 and 4. The negative impact on the costs borne by business and on the contribution to the better functioning of the internal market do not appear to be outweighed by the benefits it would bring to consumers.

Policy Option 6 includes the legislative proposals covered by Policy Option 3 or 4 and an internal market clause applying to the non-fully harmonised aspects. The internal market clause would allow the contracting parties, for those aspects covered by the clause, to choose the law of any Member State even where that law provides for a lower level of consumer protection than the law of the country where the consumer resides. Given its conflict with Article 6 of Rome I, such a clause would cause a legislative amendment and involve a major policy change a few months after the adoption of Rome I which contains a review clause (review to be completed by 2013). Furthermore, this policy option, while supported by business, has been opposed by the great majority of Member States and all consumer organisations in their response to the

Green Paper. While this option would remove regulatory barriers in the internal market and result in a reduction of the burden for business, it would transfer the problem of legal uncertainty to consumers resulting in negative impacts on consumer confidence; it would also create problems for national courts and enforcement bodies who would have to apply a foreign law.

The Commission carried out an impact assessment listed in the Work Programme, whose report is accessible on:

http://ec.europa.eu/consumers/rights/cons_acquis_en.htm.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The purpose of the proposal is to contribute to the proper functioning of the business-to-consumer internal market and achieve a high common level of consumer protection by fully harmonising the key aspects of consumer contract law which are relevant for the internal market.

- **Legal basis**

Article 95 of the Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons.

The legal fragmentation problem cannot be solved by the Member States individually since it is the different implementation by the Member States of the minimum harmonisation clauses contained in the existing Directives that is at the root of the problem. Likewise, addressing new market developments, regulatory gaps and inconsistencies in Community consumer laws in an uncoordinated manner generates more fragmentation and exacerbates the problem. Only a coordinated Community intervention can contribute to the completion of the internal market by solving this problem.

Action by Member States alone in an uncoordinated manner would not allow the internal market to deliver results both for business, in particular SMEs and consumers. Indeed such an uncoordinated action would not use the potential of the business-to-consumer internal market, particularly the high potential of growth of cross-border distance selling which SMEs could directly benefit from. It would also deprive consumers from reaping up the benefits of the internal market with more choice and better prices from cross-border offers. Finally, it would restrict the development of competitive enterprises, especially SMEs who would like to expand their business across the Community.

Community action will better achieve the objectives of the proposal for the following reasons.

The proposal is based on full harmonisation of Community consumer contract law. Its positive impact on the retail market would be considerable. As shown by the Impact Assessment Report, the savings in terms of administrative burden on business wishing to sell cross-border would be high.

The proposal would create a single set of rules ensuring a high common level of consumer protection across the Community and allowing traders to sell to consumers in 27 Member States as they would do at home with for example the same standard contract terms and the same information materials. The proposal would therefore significantly reduce traders' compliance costs while granting consumers a high level of protection.

The discrepancy between the growth in domestic and cross-border sales is particularly significant for Internet sales for which the potential of further growth is high. This proposal could therefore be one of the main tangible results of the business-to-consumer internal market.

The legal fragmentation resulting from the implementation by Member States of the minimum harmonisation clauses in the Directives under review has been shown by a comparative law analysis of the implementation of the Consumer Acquis in all 27 Member States. This analysis has been published on the website: http://ec.europa.eu/consumers/rights/cons_acquis_en.htm#comp

The 2008 Eurobarometer survey indicates that this legal fragmentation constitutes an important barrier to cross-border trade.

The scope of the proposal is limited to consumer protection rules in contracts concluded between traders and consumers. It fully harmonises all the consumer protection aspects which are relevant for cross-border trade, i.e. the aspects which are key for traders when they draft their standard contract terms and design the information materials as well as for the operation of their business (e.g. the management of returns in distance or direct selling).

The proposal therefore complies with the subsidiarity principle.

The Commission recognises that the full harmonisation approach successfully pursued with the Unfair Commercial Practices Directive in the field of consumer protection marks a new departure in the area of consumer contractual rights. This causes for an appropriate communication strategy to explain the impact and benefits of the proposal. In addition to the interinstitutional dialogue with Parliament and Council, the Commission intends to engage actively with all stakeholders in the months ahead in the various Member States.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The proposal regulates only the key aspects of consumer contract law and does not interfere with more general contract law concepts such as the capacity to contract or the award of damages.

The proposal applies both to domestic and cross-border contracts, in line with the outcome of the Green Paper. The inclusion of domestic transactions within the scope is proportionate to the objective of simplification of the Community regulatory framework, since it avoids a dual regime which would have created further fragmentation and distortions of competition between businesses trading only domestically and those trading both domestically and cross-border.

The administrative burden on public authorities would be negligible since it would merely consist in notifying to the Commission the national case law on unfair contract terms in the context of a comitology procedure.

The Community traders who wish to expand their business cross-border would significantly reduce their administrative costs due to full harmonisation. Some of the companies trading only domestically with no interest to take advantage of the internal market would marginally lose out due to their small one-off costs of adaptation to the regulatory changes. For face-to-face retailers, a minor additional burden can be expected for specific types of face-to-face businesses, such as second-hand shops acting as intermediaries of consumers.

If the proposal fosters consumer protection and increases competition in the retail market through more cross-border offers, then consumers will win through having more choice, better quality and lower prices.

- **Choice of instruments**

Proposed instruments: directive.

Other means would not be adequate for the following reasons.

The problem of fragmentation of the Community regulatory framework can only be overcome at Community level by a legislative initiative. Self-regulation or co-regulation would not solve this legal fragmentation problem.

A Directive is preferred to a Regulation since its transposition would allow a smoother implementation of the Community law into the existing national contract laws or consumer codes. It would give the Member States the necessary margin of appreciation to maintain national legal concepts and basic principles of national contract law which comply with the objectives of the Community legislative proposal. Unlike a Regulation, the implementation of a Directive may give rise to a single and coherent set of law at national level which would be simpler to apply and interpret by traders, easier to enforce by public authorities and more in line with the subsidiarity principle.

4. BUDGETARY IMPLICATION

The cost of the future Committee on unfair terms includes the salary of one official valued at € 117,000 to support the comitology process. It also includes the cost of the plenary session with one participant from the 27 Member States and three meetings scheduled per year, valued at € 20,000 each.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

The proposal considerably simplifies the Consumer Acquis. By merging together four Directives, it regulates in a systematic fashion the commonalities and eliminates the overlaps and inconsistencies. For example, the proposal consistently regulates common features such as common definitions, a core of pre-contractual information and rules on the contractual aspects of sales which are currently scattered across several Directives.

The proposal is included in the Commission's rolling programme for up-date and simplification of the acquis communautaire and its Work and Legislative Programme under the reference 2008/SANCO/001.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

Chapter I contains the common definitions such as 'consumer' and 'trader' and lays down the principle of full harmonisation.

Chapter II contains a core of information to be provided by traders prior to the conclusion of all consumer contracts as well as an information obligation on intermediaries concluding contracts on behalf of consumers. Chapter III which only applies to distance and off-premises contracts, provides for specific information requirements and regulates the right of withdrawal (length, exercise and effects) in a consistent manner. It also refers to a standard withdrawal form reproduced in Annex I(B).

Chapter IV clarifies the provisions of Directive 99/44/EC. It maintains the principle that the trader is liable to the consumer for a period of two years if the goods are not in conformity with the contract. It introduces a new rule whereby the risk of loss or damage of the goods is transferred to the consumer only when he or a third person

indicated by him other than the carrier acquires the material possession of the goods.

Chapter V broadly reflects the provision of Directive 93/13/EEC. It applies to unfair contract terms which have not been individually negotiated, such as standard contract terms. Unfair terms are those creating significant imbalances in the rights and obligations of consumers and of traders and are not binding on consumers. In order to ensure legal certainty, the Directive contains two lists of unfair terms. Annex II contains a list of terms which in all circumstances are considered unfair. Annex III contains a list of terms which are deemed unfair unless the trader proves otherwise. These same lists apply in all Member States and may only be amended by the comitology procedure provided for by the Directive.

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 establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises⁴, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁵, 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 contracts⁶, 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 guarantees⁷, 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 and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.
- (3) Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 372, 31.12.1985, p. 31.

⁵ OJ L 95, 21.4.1993, p. 29.

⁶ 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).

⁷ OJ L 171, 7.7.1999, p. 12.

- (4) In accordance with Article 14(2) of the Treaty, 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 size enterprises (including individual entrepreneurs) 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 consumer information and the right of withdrawal in distance and off-premises contracts will contribute to the 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) These disparities 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. 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.
- (8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business 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. The effect will be to eliminate the barriers stemming from the 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)⁸.
- (11) The existing Community legislation on consumer financial services 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.
- (12) The new definition of distance contract should cover all cases where sales and service contracts are concluded using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). 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 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.
- (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 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.
- (15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of business 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 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

⁸ OJ L 177, 4.7.2008, p. 6.

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 should include in particular documents on paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard drive of the computer on which the electronic mail or a pdf file is stored.
- (17) Consumers should be 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.
- (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, which allows him to ascertain the nature and functioning of the goods.
- (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 limits⁹ 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.

⁹ OJ L 124, 8.6.1971, p. 1.

- (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, the withdrawal period should start when the consumer acquires the material possession of 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.
- (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 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.
- (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 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-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.
- (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.
- (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. That is

applicable 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).

- (34) Furthermore, in case of distance contracts for the provision of services, for which the performance begins during the withdrawal period (e.g. 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.
- (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 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.
- (38) In the context of consumer sales, the delivery of goods can take place in various ways. 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.
- (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.

- (40) 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 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.
- (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. 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 lack of conformity.
- (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.
- (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 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 provisions of the Member States which comply with Community law. Similarly terms which reflect the principles or provisions of international conventions to which the Community or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.
- (47) 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.

- (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 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.
- (50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two 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 Commission¹⁰.
- (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.
- (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.

¹⁰ OJ L 184, 17.7.1999, p. 23.

- (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.
- (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 will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
- (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')¹¹ 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.
- (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,

¹¹ OJ L 149, 11.6.2005, p. 22.

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 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 outside his trade, business, craft or profession;
- (2) 'trader' means any natural or legal person who, 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;
- (3) 'sales contract' means any contract for the sale of goods by the trader to the consumer including any mixed-purpose contract having as its object both goods and services;
- (4) 'goods' means any tangible movable item, with the exception of:
 - (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;
- (5) 'service contract' means any contract other than a sales contract whereby a service is provided by the trader to the consumer;
- (6) 'distance contract' means any 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;
- (8) 'off-premises contract' means:
 - (a) 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 for which an offer was made by the consumer in the same circumstances, or

- (b) 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.
- (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 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 offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods;
- (17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the Community 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 to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications 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 contract' means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and these goods or services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.

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.
2. This Directive shall 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.
3. 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 Council¹² and of Council Directive 90/314/EEC¹³.
4. Articles 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 Council¹⁴ and Directive 2000/31/EC of the European Parliament and of the Council¹⁵.

Article 4

Full harmonisation

Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection.

Chapter II

Consumer information

Article 5

General information requirements

1. Prior to the conclusion of any sales or service contract, the trader shall provide the consumer with the following information, if not already apparent from the context:

¹² OJ L 280, 29.10.1994, p. 83.

¹³ OJ L 158, 23.6.1990, p. 59.

¹⁴ OJ L 376, 27.12.2006, p. 36.

¹⁵ OJ L 178, 17.7.2000, p. 1.

- (a) the main characteristics of the product, to an extent appropriate to the medium and the product;
 - (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;
 - (c) the price inclusive of taxes, or where the nature of the product 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 or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
 - (d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
 - (e) the existence of a right of withdrawal, where applicable;
 - (f) the existence and the conditions of after-sales services and commercial guarantees, where applicable;
 - (g) the duration of the contract where applicable or if the contract is open-ended, the conditions for terminating the contract;
 - (h) the minimum duration of the consumer's obligations under the contract, where applicable;
 - (i) 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.
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.
 3. The information referred to in paragraph 1 shall form an integral part of the sales or service contract.

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 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.

Article 9 Information requirements for distance and off-premises contracts

As regards distance or off-premises contracts, the trader shall provide the following information which shall form an integral part of the contract:

- (a) 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) where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;
- (c) 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;
- (e) the possibility of having recourse to an amicable dispute settlement, where applicable;
- (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.

Article 10 Formal 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 in plain and intelligible language and be legible. The order form shall include the standard withdrawal form set out in Annex I(B).
2. An off-premises contract shall only be valid if the consumer 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 formal requirements other than those provided for in paragraphs 1 and 2.

Article 11
Formal 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 prior to the conclusion of the contract, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.
2. If 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.
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 the information regarding the main characteristics of the product and the total price referred to in Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in Articles 5 and 7 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.
5. Member States shall not impose any formal requirements other than those provided for in paragraphs 1 to 4.

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.
2. In the case of an off-premises contract, the withdrawal period shall begin from the day 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.

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.
4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.

Article 13
Omission of information on the right of withdrawal

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), the withdrawal period shall expire three months after the trader has fully performed his other contractual obligations.

Article 14
Exercise of the right of withdrawal

1. 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).
Member States shall not provide for any other formal requirements applicable to this standard withdrawal form.
2. 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 withdrawal form on the trader's website. In that case the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.

Article 15
Effects of withdrawal

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

- (a) to perform the distance or off-premises contract, or
- (b) to conclude an off-premises contract, in cases where an offer was made by the consumer.

Article 16
Obligations of the trader in case of withdrawal

1. The trader shall reimburse any payment received from the consumer within thirty days from the day on which he receives the communication of withdrawal.
2. 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

1. For sales contracts for 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 fourteen days from the day on which he communicates his withdrawal to the trader, 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 the trader has agreed to bear that cost.

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 the nature and functioning of the goods. He shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal right in accordance with 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.

Article 18

Effects of the exercise of the right of withdrawal on ancillary 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 contracts shall be automatically terminated, without any costs for the consumer.
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 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, before the end of the fourteen day period referred to in Article 12;
 - (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;
 - (c) the supply of goods made to the consumer's specifications or clearly personalized 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 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;
 - (e) the supply of sealed audio or video recordings or computer software which were unsealed by the consumer;
 - (f) the supply of newspapers, periodicals and magazines;
 - (g) gaming and lottery services;
 - (h) contracts concluded at an auction.
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 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;
 - (c) 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 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/EC¹⁶ 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.

¹⁶ OJ L 271, 09.10.2002, p. 16.

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 agreed otherwise, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier and indicated by the consumer, 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 consumer shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.

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, other than the carrier and indicated by the consumer has acquired the material possession of the goods.
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 by the consumer has failed to take reasonable steps to acquire the material possession of the goods.

Article 24

Conformity with the contract

1. The trader shall deliver the goods in conformity with the sales contract.
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;
 - (b) they are fit for any particular purpose 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;
 - (c) they are fit for the purposes for which goods of the same type are normally used or
 - (d) they show the quality and performance which are normal in goods of the same type 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 reasonably have been aware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.
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;
 - (c) the decision to buy the goods could not have been influenced by the statement.
5. Any lack of conformity 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 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 to:
- (a) have the lack of conformity remedied by repair or replacement,
 - (b) have the price reduced,
 - (c) have the contract rescinded.

2. The trader shall remedy the lack of conformity by either repair or 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 disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it imposes costs on him which, in comparison 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.
The consumer may only rescind the contract if the lack of conformity is not minor.
4. The consumer may resort to any remedy available under paragraph 1, where one of the following situations exists:
 - (a) the trader has implicitly or explicitly refused 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 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 Article 24(2)(b).

Article 27 *Costs and damages*

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

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. 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. 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.

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. It shall include the following:
 - (a) legal rights of the consumer, as provided for in Article 26 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, that the commercial guarantee cannot be transferred to a subsequent buyer.
3. If the consumer so requests, the trader shall make the guarantee statement available in a durable medium.
4. Non compliance with paragraph 2 or 3 shall not affect the validity of the guarantee.

Chapter V

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 the consumer agreed to without having the possibility of influencing their content, in particular where such contract terms are 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, 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 or regulatory provisions, which comply with Community law and the provisions or principles of international conventions to which the Community or the Member States are party.

Article 31
Transparency requirements of contract terms

1. Contract terms shall be expressed 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 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 contract terms 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 in accordance with Article 31.
3. Paragraphs 1 and 2 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.

Article 33
Burden of proof

Where the trader claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him.

Article 34
Terms considered unfair in all circumstances

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.

Article 35
Terms presumed to be unfair

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.

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 shall not be binding on the consumer. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

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 use 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").
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC¹⁷ shall apply, having regard to the provisions of Article 8 thereof.

Article 41 *Enforcement*

1. Member States shall ensure that adequate and effective means exist to ensure compliance with 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.

¹⁷ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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 shall take appropriate measures to inform consumers of the 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 prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply 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.

Chapter VII
Final provisions

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.

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 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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I
INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF
WITHDRAWAL

A. Information to be provided with the withdrawal form

1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.
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:
 - (a) for off-premises contracts, within a period of fourteen days following his signature of the order form;
 - (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;
 - (c) for distance service contracts:
 - 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;
 - 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.
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).
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.
5. A statement that the consumer can use the withdrawal form set out in Part B.

B. Model withdrawal form

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

- To:
- 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 of consumer(s)

- Address of consumer(s)
- Signature of consumer(s) (only if this form is notified in writing)
- Date

*Delete as appropriate.

ANNEX II

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;
- b) limiting the trader's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular condition 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;
- (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.

ANNEX III

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;
 - (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;
 - (d) allowing the trader to terminate the contract at will where the same right is not granted to the consumer;
 - (e) enabling the trader to terminate an open-ended contract without reasonable notice except where the consumer has committed a serious breach of contract;
 - (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;
 - (g) 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;
 - (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;
 - (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.
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;
 - (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.
4. Point 1(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.

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

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
Article 1 ¹⁸				
	Article 1, paragraph 1 ¹⁹			
	Article 1, paragraph 2 (replaced)			Article 30, paragraph 3
		Article 1 ²⁰		
			Article 1, paragraph 1 ²¹	
			Article 1, paragraph 2 point a (replaced)	Article 2, point 1
			Article 1, paragraph 2 point b ²²	Article 2, point 4
				Article 21, paragraph 3
			Article 1, paragraph 2 point c	Article 2, point 2

¹⁸ Replaced, in substance, by Article 3 and Article 8 read in conjunction with Article 2, point 8.

¹⁹ Replaced, in substance, by Article 1.

²⁰ Replaced, in substance, by Article 1.

²¹ Replaced, in substance, by Article 1.

²² Amended, in substance, by Article 21 paragraph 4 .

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
			Article 1, paragraph 2 point d	Article 2, point 18
			Article 1, paragraph 2 point e (replaced)	Article 2, point 19
			Article 1, paragraph 2 point f	Deleted
			Article 1, paragraph 3 (replaced)	Article 21, paragraph 4
			Article 1, paragraph 4	Article 21, paragraph 2
Article 2 (replaced)				Article 2, point 1
				Article 2, point 2
	Article 2 point a			Deleted
	Article 2 point b (replaced)			Article 2, point 1
	Article 2 point c (replaced)			Article 2, point 2
		Article 2, paragraph 1 (replaced)		Article 2, point 6
		Article 2, paragraph 2 (replaced)		Article 2, point 1

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
		Article 2, paragraph 3 (replaced)		Article 2, point 2
		Article 2, paragraph 4, 1 st sentence (replaced)		Article 2, point 7
		Article 2, paragraph 4 , 2 nd sentence		Deleted
		Article 2, paragraph 5		Deleted
			Article 2, paragraph 1	Article 24, paragraph 1
				Article 22
			Article 2, paragraph 2	Article 24, paragraph 2
			Article 2, paragraph 3	Article 24, paragraph 3
			Article 2, paragraph 4	Article 24, paragraph 4
			Article 2, paragraph 5	Article 24, paragraph 5
Article 3, paragraph 1				Deleted

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
Article 3, paragraph 2, point a (replaced)				Article 20, paragraph 1, point a
Article 3, paragraph 2, point b (replaced)				Article 20, paragraph 1, point d
Article 3, paragraph 2, point c (replaced)				Article 12, paragraph 2
Article 3, paragraph 2, point d				Article 20, paragraph 2, point a
Article 3, paragraph 2, point e				Article 20, paragraph 2, point b
Article 3, paragraph 3 ²³				
	Article 3, paragraph 1			Article 32, paragraph 1²⁴
	Article 3, paragraph 2, 1st subparagraph (replaced)			Article 30, paragraph 1

²³ Replaced in substance by Article 3 and Article 8 read in conjunction with Article 2, point 8.

²⁴ To be read in conjunction with Article 30, paragraph 1.

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
	Article 3, paragraph 2, 2nd subparagraph			Article 30, paragraph 2
	Article 3, paragraph 2, 3rd subparagraph			Article 33
	Article 3, paragraph 3 (replaced)			Article 34
				Article 35
		Article 3, paragraph 1, 1 st indent (replaced)		Article 3, paragraph 2
		Article 3, paragraph 1, 2 nd indent		Article 20, paragraph 1, point b
		Article 3, paragraph 1, 3 rd indent (replaced)		Article 20, paragraph 1, point c
		Article 3, paragraph 1, 4 th indent (replaced)		Article 20, paragraph 1, point a

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
		Article 3 ²⁵ , paragraph 1, 5 th indent (replaced)		
		Article 3, paragraph 2, 1 st indent (replaced)		Article 20, paragraph 1, point d
		Article 3, paragraph 2, 2 nd indent (replaced)		Article 20, paragraph 3
			Article 3, paragraph 1(replaced)	Article 25
				Article 23
			Article 3, paragraph 2 (replaced)	Article 26, paragraph 1
Article 4, 1 st sentence (replaced)				Article 9
Article 4, 2 nd sentence (replaced)				Article 10
	Article 4, paragraph 1 (replaced)			Article 32, paragraph 2

²⁵ Partly replaced, by Article 19, paragraph 1, point h.

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
	Article 4, paragraph 2 (replaced)			Article 32, paragraph 3
		Article 4, paragraph 1, point a (replaced)		Article 5, paragraph 1, point b
		Article 4, paragraph 1, point b (replaced)		Article 5, paragraph 1, point a
		Article 4, paragraph 1, point c (replaced)		Article 5, paragraph 1, point c
		Article 4, paragraph 1, point d (replaced)		Article 5, paragraph 1, point c
		Article 4, paragraph 1, point e (replaced)		Article 9, paragraph 1, point a
Article 5, paragraph 1 (replaced)				Article 12
				Article 14
Article 5, paragraph 2 (replaced)				Article 15
				Article 16

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.	Old numbering of Directive 1993/13/EC on unfair terms in consumer contracts	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.	Old numbering of Directive 1999/44/EC on the sale of consumer goods and associated guarantees	New numbering in this Directive
				Article 17
	Article 5, 1 st sentence (replaced)			Article 31
	Article 5, 2 nd and 3 rd sentence			Article 36
Article 6 (replaced)				Article 43
	Article 6, paragraph 1			Article 37
	Article 6, paragraph 2			Deleted
Article 7 ²⁶				
	Article 7, paragraph 1			Article 38, paragraph 1
	Article 7, paragraph 2 (replaced)			Article 38, paragraph 2

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

²⁶ 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 ²⁷	NO	NO	NO	5
XX 010211	Non com	Non-diff ²⁸	NO	NO	NO	5

²⁷ Non-differentiated appropriations hereafter referred to as NDA.

²⁸ 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
------------------	-------------	--	------------------	-----------------	-----------------	-----------------	-----------------	---	-------

Operational expenditure²⁹

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

Administrative expenditure within reference amount³⁰

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

Commitment Appropriations		a+c							
Payment Appropriations		b+c							

Administrative expenditure not included in reference amount³¹

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

TOTAL CA including cost of Human Resources		a+c+d+e	0.177	0.177	0.177	0.177	0.177	0.177	1.062
TOTAL PA including cost of Human Resources		b+c+d+e	0.177	0.177	0.177	0.177	0.177	0.177	1.062

²⁹ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

³⁰ Expenditure within article xx 01 04 of Title xx.

³¹ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

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							
TOTAL CA including co-financing	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 Agreement³² (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)

		Prior to action [Year n- 1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] ³³
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

³² See points 19 and 24 of the Interinstitutional agreement.

³³ 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.

Annual requirements	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 ³⁴																
Action 1: Committee on unfair terms in consumer contracts																
- - 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																
Action 2.....																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No.2 ¹																

³⁴

As described under Section 5.3.

Action 1.....																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No.n 1																
Sub-total Objective n																
TOTAL COST																

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 (number of posts/FTEs)					
		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 ³⁵ (XX 01 01)	A*/AD	1	1	1	1	1	1
	B*, C*/AST						
Staff financed ³⁶ by art. XX 01 02							
Other staff ³⁷ financed by art. XX 01 04/05							
TOTAL							

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
- ☐ 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

³⁵ Cost of which is NOT covered by the reference amount.

³⁶ Cost of which is NOT covered by the reference amount.

³⁷ Cost of which is included within the reference amount.

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
1 Technical and administrative assistance (including related staff costs)							
Executive agencies ³⁸							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total Technical and administrative assistance							

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)						
Total cost of Human Resources and associated costs (NOT in reference amount)						

³⁸ 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							
2 Total Other Management Expenditure (XX 01 02 11)	0.060	0.060	0.060	0.060	0.060	0.060	0.360
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	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.