



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE**

**on the implementation of Directive 1997/7/EC
of the European Parliament and of the Council of 20 May 1997
on the Protection of Consumers in respect of Distance Contracts**

PREFACE

The purpose of this Communication is to report to the Council, the European Parliament and the European Economic and Social Committee on the implementation of **Directive 1997/7/EC on the Protection of Consumers in respect of Distance Contracts by the Member States**.

It also sets out a questionnaire for public consultation at Annex II. The aims of the questionnaire and the procedure for answering it can also be found in this Annex.

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(Text with EEA relevance)

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1. INTRODUCTION

All Member States have transposed 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 Contracts¹ (“the Directive”) into national law (see Annex I). In this document (the “Report”), the Commission will report on the implementation of the Directive, as provided by its Article 15(4)². Delays in compliance by the Commission with Article 15(4) were initially due to late transposition by some of the 15 Member States. The Commission decided to postpone publication of the Report till after the accession of the 10 Member States, in order to produce a Report which covers the situation in all 25 Member States.

A questionnaire (the “Questionnaire”) is annexed to this Report (Annex II). The aim of this Questionnaire is to consult interested parties on a number of issues related to the Directive. In particular, the Commission will look at whether the national divergences in transposition, emanating from the regulatory options in the Directive and the use of the minimum clause at Article 14 which states that Member States may introduce or maintain more stringent provisions to ensure a higher level of consumer protection as long as these measures are compatible with the Treaty, have had an impact on the Internal Market and affected business and consumer confidence in cross border trade.

The Commission does not consider it appropriate to put forward any proposal for revising the Directive until the diagnostic phase of the review of the *consumer acquis communautaire* (the “acquis”) is concluded (see Annex III). This review aims at assessing possible failings in terms of consumer protection, in particular in the light of new marketing practices and technologies, such as internet and mobile commerce, and identifying inconsistencies between the different consumer directives under review. On the basis of the outcome of the consultation launched by the Questionnaire and of the results of the review, the Commission will consider the need for further legislative initiatives in the field of distance selling in accordance with the better regulation objectives pursued by the Commission in terms of simplification of the regulatory environment³.

In considering the national transpositions of the Directive, the Commission has often made use of translations. Some of the national transposition problems identified in this Report may therefore emanate from translation problems.

¹ OJ L 144, 4.6.1997, p. 19.

² Article 15(4) stipulates that “No later than four years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive, accompanied if appropriate by a proposal for the revision thereof”.

³ See Communication from the Commission to the Council and the European Parliament of 16 March 2005 on Better Regulation for Growth and Jobs in the European Union (COM(2005) 97 final) and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 25 October 2005 on Implementing the Community Lisbon programme: a Strategy for the Simplification of the regulatory environment (COM (2005) 535 final). The review of the consumer protection acquis features in the Simplification Rolling Programme annexed to this latter Communication”.

2. THE MAIN PROVISIONS OF THE DIRECTIVE

The Directive aims at ensuring that consumers, who buy goods or services via distance selling means, hence without any face-to-face contact with the supplier, are in no worse a position than consumers purchasing with face-to-face contact.

The Directive covers both goods and services. However, Article 3 limits the application of the Directive by excluding certain types of contracts from all or some of the Directive's provisions. These exemptions are justified on the basis of the nature of the underlying goods or services. Financial services, due to their complexity and their value, are amongst these exemptions and have been covered in the Distance Marketing of Financial Services Directive 2002/65/EC⁴, which will also undergo a review in the near future⁵. For this reason, financial services will not be covered in this Report. The review of Directive 2002/65/EC will nevertheless take into account the relevant findings of the review of this Directive (e.g. findings on “durable medium”).

Article 4 of the Directive lists information the consumer must be supplied with before entering into a distance contract. This information corresponds to information which would be available to a consumer if he were purchasing face-to-face e.g. main characteristics of the goods or services and price including taxes. The Directive also prescribes the manner in which this information is to be given and its timing.

To protect consumers after conclusion of the contract, Article 5 provides that a consumer must always be given an address to which he can complain. This requirement must be fulfilled in writing or in another durable medium within a specific timeframe. In addition, under Article 5(1) most of the prior information, along with extra information which is relevant after the contract has been entered into e.g. existing after sales services and guarantees, is also to be confirmed in this way in most circumstances.

Since a consumer who buys goods or services at a distance cannot fully assess whether his purchase corresponds to what he needs when making the order, the Directive contains a right of withdrawal of at least 7 working days. In exercising this right, the consumer does not have to justify his decision. He should not incur any penalty, and must be refunded promptly. He may only be charged for the cost of return. Under Article 6(3), certain goods and services are exempted from the right of withdrawal due to their nature (e.g. perishable goods).

The Directive also protects consumers from excessive delays in performance. Hence under Article 7, the contract must be performed within 30 days of the day after the order was sent to the supplier. Discretion was granted to Member States to introduce provisions on replacement goods or services where those originally ordered are unavailable. Where this discretion has not been exercised or a supplier does not provide a replacement, a consumer is entitled to a full refund within 30 days.

⁴ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, OJ L 271, 9.10.2002, p. 16.

⁵ Commission Communication of 6 April 2006 on the review of Directive 2002/65 of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directive 97/7/EC and 98/27/EC (COM(2006) 161 final).

Article 10 requires the prior consent of the consumer when a supplier makes use of a fax machine or automatic calling machine. Other means of distance communication can only be used where there is no objection from the consumer.

This Report does not cover the provisions at Article 9 on inertia selling since these will be replaced and fully harmonised by Article 15 of the Unfair Commercial Practices Directive (UCP)⁶. The provisions of Article 8 on payment by card will also not be discussed in the context of this Report in the light of the ongoing negotiations on the Commission Proposal on Payment Services⁷ which proposes the deletion of Article 8. The provisions on redress (Article 11) will be considered in the broader context of the review and the Commission's work on redress.

3. DEFINITIONS – ARTICLE 2

Article 2 defines key terms used throughout the Directive. The definition of “*consumer*” and “*supplier*” are not specific to the regulation of distance sales and will be considered in the broader context of the review of the acquis.

The definition of “*distance contract*” at Article 2(1) has not given rise to specific problems. Member States have generally followed the wording of the Directive relatively faithfully. Although the Commission has not received specific complaints concerning the notion of “*organised distance sales or service provision scheme*”, it feels that consumers may not be aware that the Directive does not apply where a supplier trades at a distance on an ad-hoc basis. Several Member States including France, Latvia and Slovakia have not transposed this notion, maybe to overcome this problem.

The Commission believes that the current definition of “*means of distance communication*” is flexible enough to cover new means of distance communication such as m-commerce (i.e. commerce undertaken by short message service). Its transposition nevertheless needs to be clarified with certain Member States. The Czech Republic, for instance, appears to have excluded “*correspondence*”.

The Czech Republic, Denmark, Germany, France, Greece, Latvia, Poland, Sweden, Austria, Slovakia and Slovenia have not provided the Commission with a transposition of the definition of “*operator of means of distance communication*” whereas Spain, Lithuania, Malta and the Netherlands' transpositions need to be clarified.

Further questions relating to definitions will appear in other parts of this Report, as and when they arise.

⁶ 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”), OJ L 149, 11.6.2005 p. 22.

⁷ proposed Article 81 of COM(2005) 603 final.

4. SCOPE OF APPLICATION – ARTICLE 3 EXEMPTIONS

Article 3 limits the scope of the Directive by excluding certain distance contracts from all or part of the Directive's provisions. The Commission needs to establish whether the exemptions are still appropriate, whether they need to be revised, expanded or repealed. This Report will consider a number of problems encountered by the Commission.

Member States have transposed these exemptions in different ways. For example, the Netherlands only appear to have excluded the construction of immovable property but not its sale.

The Commission has encountered a number of issues needing clarification. For instance, Belgium has not provided the Commission with its transposition of the exemptions at Article 3, except for financial services. The Commission knows that at least some of these have been transposed.

In addition to the exemptions provided for in Article 3, Spain and Luxembourg provide in their national distance selling legislation for general exemptions for contracts concluded by electronic means although the E-commerce Directive⁸ specifies that it is without prejudice to the Directive.

The relationship between the Timeshare Directive⁹ and the Directive and the meaning of “*immovable property rights*” may need to be clarified. Some Member States including Hungary, Denmark, Slovenia and the UK have expressly excluded timeshare fully or in part from the scope of their transposition under the exemptions whilst others have not.

The increase in popularity of on-line auctions since the adoption of the Directive has led to a significant rise in consumer complaints. Whereas originally websites such as eBay were geared towards C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods. The Commission is aware of national case law on whether websites such as eBay amount to auction houses and are therefore exempted from the Directive. The transposition checks have confirmed the need to look at the meaning of “*auction*” in national laws. In France, for instance, the exemption has been limited to “*public*” auctions; in Denmark the exemption applies to auctions organised in such a way that a large proportion of the bidders normally is present at the place of the auction. Some Member States also appear to have only partially transposed the exemption (e.g. in Estonia, the exemption for auctions is limited to the non application of the right of withdrawal).

Certain Member States seem to have extended the partial exemptions at Article 3(2) to all the provisions of the Directive (e.g. Slovenia, Czech Republic, and Greece). The laws of others are unclear in this respect (e.g. Latvia; Finland, Lithuania; the Netherlands; Slovenia; Denmark, Greece, Poland, Hungary). For instance, the “*regular roundsmen*” exemption at Article 3(2) first indent may have caused interpretation problems. The Commission's translation of the Finnish distance selling law refers to “*regular distribution system*” which

⁸ Article 1 (3) read together with recital 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'), OJ L 178, 17.7.2000, p. 1.

⁹ Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, OJ L 280, 29.10.1994, p. 83.

may be broader. The Hungarian transposition applies to goods delivered daily to the consumer. New market developments such as the rise in internet grocery shopping suggest this exemption may need to be re-examined. Use of the minimum clause has also been made in the context of these exemptions. For instance, the Polish transposition does not refer to beverages or goods for everyday consumption.

The exemption at Article 3(2) second indent may also have caused interpretation problems in a number of Member States. For example, Latvia, Lithuania and Poland have extended the exemption to contracts where the date for execution is determined after conclusion of the contract. The European Court of Justice ruling in the *Easycar*¹⁰ case, in which the Court ruled that car hire amounts to “*transport*” within the meaning of the Directive, indicates that the Directive does not cover some distance contracts which the Commission and at least certain Member States intended it to¹¹. The concept of “*leisure services*” may also be unclear. This may explain why the right for suppliers not to apply Article 7(2) to outdoor leisure services in specific circumstances has only been transposed by Cyprus, Ireland, Portugal and the United Kingdom. In those Member States where this exemption has been applied, the imprecision of “*specific circumstances*” may create legal uncertainty for both consumers and business.

5. PRIOR INFORMATION REQUIREMENTS – ARTICLE 4

The prior information requirements set out at Article 4 of the Directive raise some important interpretation questions.

Although a significant number of Member States have transposed Article 4(1) literally, most of them have also used the minimum clause to enhance national consumer protection. The transposition checks have revealed that some requirements have been transposed poorly in some Member States. This Report focuses on those requirements which may have been badly transposed because of possible interpretation problems with the Directive.

The timing and modalities for giving prior information may need to be reconsidered to ensure consumers are adequately informed when deciding whether to enter into a transaction. The notions of “*in good time prior to the conclusion of any contract*” at Article 4(1) and “*in a clear and comprehensible manner in any way appropriate to the means of distance communication used*” at Article 4(2) have led to divergent interpretations. For example, it seems that in Poland prior information must be provided before a means of distance communication is used.

Prior information regarding price at Article 4(1)(c) is a good example of how prior information can determine whether a consumer will enter into a transaction. Some Member States, including Belgium and Sweden have not explicitly referred to taxes in their transposition. The Commission will clarify with them whether it is a principle of national law that taxes are always included in references to price. It will also consider whether the Directive should explicitly refer to other forms of charges made to the consumer e.g. booking/handling fees taking into account Article 7(4)(c) of the UCP.

¹⁰ Case C-336/03 *Easycar (UK) Ltd v Office of Fair Trading*, ECR 2005, p. I-1947.

¹¹ France, Spain and the United Kingdom.

The Commission is also aware of problems concerning price transparency and the operation of *premium rate services*. The Commission will examine whether the provisions of the Directive relevant to *premium rate services* need to be reinforced e.g. Article 4(1)(g) prior information on the cost of using the means of distance communication when it is calculated at a rate other than the basic rate .

A majority of Member States have made use of the minimum clause to make it compulsory to indicate an address for complaints (e.g. Austria, Czech Republic, Denmark, Finland, Luxembourg, Malta, Slovakia, Slovenia) and many have chosen to indicate whether or not the right of withdrawal applies (e.g. Belgium, Germany, Italy, the Netherlands, Slovenia, Spain).

The minimum clause has also been used in a number of other ways. For example, in Italy the consumer can request the prior information in Italian where personal communication means are used; Estonia and Spain have introduced additional information requirements on replacement goods.

A significant number of Member States have not expressly transposed the good faith requirement at Article 4(2) and/or make no express reference to the protection of certain types of consumers, including minors. These provisions will be considered further in the course of the review.

6. WRITTEN CONFIRMATION OF INFORMATION – ARTICLE 5

Article 5 provides for confirmation in writing of certain information, including most of the information referred to in Article 4. For this reason, Article 5 must be considered alongside Article 4. The timing of written confirmation needs to be discussed with a number of Member States (Denmark, Germany, Hungary, Latvia, Lithuania, Poland).

Enquiries concerning the information to be confirmed in writing must also be made with some Member States since some may have omitted to prescribe confirmation of all, or part of the required information (e.g. in the Czech Republic only information concerning the identity and location of the supplier must be confirmed in writing).

Moreover, the minimum clause has led to divergences in national requirements such as language requirements (Cyprus, Greece, Spain) or additional information to be provided in writing. Confirmation of information concerning the right of withdrawal in particular has generated additional national rules. Cyprus has prescribed a specimen notice of withdrawal which must be communicated to the consumer with the written confirmation. In Spain, a supplier must provide a withdrawal/cancellation document containing prescribed information with the written confirmation. Belgium has gone further by prescribing standard clauses in a given format and the consequences of failure to do so.

Some Member States and stakeholders have raised the need to clarify the concept of “*durable medium*” at Article 5(1) in the light of Directive 2002/65/EC and new technologies. Italy has avoided interpretation problems by introducing stricter rules i.e. confirmation can only be given in another durable medium if the consumer so chooses. Lithuania, Czech Republic, Slovakia and Poland have opted not to refer to “*durable medium*”.

7. RIGHT OF WITHDRAWAL – ARTICLE 6

The right of withdrawal introduced in four consumer directives including at Article 6 of the Directive, is often used as a prime example of inconsistencies in the *acquis* (e.g. the so-called “cooling-off” periods vary from one directive to another)¹² and of national divergences resulting from the use of the minimum clause. In the field of distance selling, the Directive sets a minimum period of seven working days for the consumer to withdraw from the contract. Member States have transposed this requirement in a multitude of ways, the most common being seven working days or 14 calendar days (see Annex IV).

The transposition of Article 6(1), which prescribes how long and from when the cooling off period runs, has not generated many problems. The French cooling off period is calculated in “*jours francs*”, the exact meaning of which must be clarified with the French authorities. The point from which the period starts to run raises more fundamental questions. For instance, “*receipt*” of goods may be subject to different interpretations in the Member States. The issue of when receipt takes place has been raised on occasion (e.g. if a parcel is delivered when the consumer is absent, does receipt occur when the postman leaves the card notifying attempted delivery or when the consumer picks up the parcel from the post office) and will be considered in the broader review work. The Commission also wonders whether the treatment of deliveries in batches needs to be re-examined in the course of the review. In Germany, Estonia, Latvia and Sweden, national laws specify that the period runs from the first delivery of part of the goods. Recital 10 appears to allow this interpretation. In the Commission’s opinion, where an order covers different products, the consumer should be entitled to a cooling off period after the delivery of each of the products ordered. This should not be the case where an order of a single product is delivered in batches. For example, an internet order of different books (e.g. a novel and a biography) which cannot be delivered in one batch because of unavailability of one of the items should not be treated in the same fashion as a contract for the delivery of a set of encyclopaedia over a period of time.

The financial consequences of withdrawing from a contract and/or the timing of reimbursement (Article 6(1)-(2)) must also be discussed with a number of Member States (e.g. the Czech Republic appears not to have transposed Article 6(2); Germany and Lithuania have not referred to the time limit for refund). Hungary’s transposition is unclear, as is Austria and Sweden’s concerning penalties. In Finland, the refund must be executed within 30 days of return. Since the Directive is silent as to when the 30 day period runs from e.g. notice of withdrawal, receipt of the goods by supplier, it is unclear whether this interpretation is acceptable.

Article 6(3) lists exemptions to the right of withdrawal. Overall, these exemptions appear to have been transposed adequately, despite the need for some clarifications (e.g. the exemption at Article 6(3) fourth indent may be wider than the directive allows in Spain, Luxembourg, Italy and Poland). These exemptions will be closely examined in the context of the review to establish whether they are up-to-date.

¹² The Timeshare Directive refers to a minimum of 10 calendar days whereas the Doorstep Selling Directive 85/577/EEC refers to a minimum of 7 days, (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). The Distance Marketing of Financial Services Directive refers to 14 calendar days.

The minimum clause has again been used when transposing Article 6. Some of the exemptions at Article 6(3) have not been transposed evenly across Europe (e.g. in Belgium, the exemptions do not apply where a supplier has failed to mention in the course of providing prior information that the right of withdrawal does not exist; in Denmark the exemption for newspapers only applies in given circumstances). National divergences are particularly clear when looking at the modalities for exercising the right of withdrawal: in Portugal the goods must be returned within 30 days; the form of the notice of withdrawal is prescribed in some Member States; a number of Member States, including the United Kingdom, Finland and Portugal have made provisions concerning a duty of care whilst the goods are in the consumer's possession. Member States have also made different uses of the regulatory option concerning the cost of returning the goods, including payment by the consumer in all cases (e.g. Cyprus), payment by the consumer in certain circumstances (e.g. United Kingdom, Ireland, Belgium), payment by the consumer at the supplier's discretion (Estonia, Malta) and payment by the supplier where this can be done by normal post (Finland). In Estonia, there is a 10 euro cap on the cost to be borne by the consumer when returning the goods.

Not all Member States have notified their transposition of Article 6(4) covering cancellation of credit agreements upon exercise of the right of withdrawal (e.g. Slovenia) and the transposition needs to be clarified with others (e.g. Czech Republic, Cyprus, Poland).

Finally, it is worth noting that the Belgian transposition measure allows for specific rules for small and medium sized enterprises to be introduced. Although the Commission has no evidence that this power has been used, any such rules may be in breach of the Directive.

8. PERFORMANCE – ARTICLE 7

Overall, the transposition of Article 7 dealing with performance of the contract gives rise to problems associated with timing. It should be pointed out that neither the Czech Republic nor Germany have notified their transposition of Article 7(1).

The main comment to be made about Article 7 relates to the inconsistent use of terminology throughout the Directive and within Article 7 in particular. Indeed, Article 7 refers to “*days*” whereas Article 6 refers to “*working days*”. In addition, the point from which calculation periods run is specified in Article 7(1) (“*from the day following*” the order) and unspecified in Article 7(2). As presently drafted, Article 7(2) has been interpreted in a number of ways. Some Member States have interpreted the timing requirement as applying only to the refund, others to both the refund and the notification of non availability. Such issues need to be addressed with Estonia, Greece, Hungary, Latvia, Lithuania, the Netherlands, Austria and the United Kingdom. Conversely, some Member States such as Finland, Cyprus, Slovenia and Slovakia have tightened all or some of the time requirements. Others, like France and Denmark, impose a financial penalty in the form of interest.

The transposition of Article 7(3) is also weak in some Member States. For example, in Italy there is no reference to the “*clear and comprehensible manner*” in which the consumer must be informed of the possibility for the supplier to provide replacement goods or services. Estonia has avoided this kind of problem by incorporating this information requirement to the provisions transposing Articles 4 and 5. Belgium, Luxembourg, Denmark, Germany and Austria appear to have exercised their discretion by not transposing the replacement goods provisions at Article 7(3).

9. RESTRICTIONS ON THE USE OF CERTAIN MEANS OF DISTANCE COMMUNICATION – ARTICLE 10

Many Member States have failed to notify all, or part of, their national provisions transposing this Article. This may be justified by the fact that subsequent Community legislation also covers these restrictions. Indeed, the Directive on privacy and electronic communications 2002/58/EC¹³ requires Member States to ensure that the use of automated calling systems without human intervention, facsimile machines or electronic mail be only allowed for the purposes of direct marketing in respect of subscribers who have given their prior consent (“opt-in” system). As far as other forms of distance communication are concerned, it remains up to Member States to decide whether to adopt an opt-in or opt-out system.

10. CONCLUSIONS

The transposition of the Directive in the Member States raises a number of confirmed or apparent problems. Many of these may emanate from the wording of the Directive. Although, the Directive appears to be flexible enough to cover new technologies and forms of marketing, the practical application of the Directive may not weather the test of time. The proper execution of the rights and obligations set out in the Directive is not always practicable. In addition, the transposition checks have revealed significant divergences between national laws as a result of the use of the minimum clause. It is unclear at this stage to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. The Commission must establish this in order to decide whether the Directive needs to be revised.

These issues will all be examined further in the course of the review of the acquis. In doing so, the Commission will need to take into account not only consumer protection legislation, but also other fields of community legislation including e-commerce and privacy legislation.

¹³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37.

ANNEX I

TABLE OF NATIONAL IMPLEMENTATION MEASURES OF MEMBER STATES

Member State	Implementing measures known to the Commission on 1 April 2006	Date law came into force
Österreich	Bundesgesetz, mit dem Bestimmungen über den Vertragsabschluß in Fernabsatz in das Konsumentenschutzgesetz eingefügt und das Bundesgesetz gegen den unlauteren Wettbewerb 1984 sowie das Produkthaftungsgesetz geändert werden (Fernabsatz-Gesetz) BGBl. Nr. 185/1999	1 June 2000
Belgique	Loi du 14 juillet 1991 sur les pratiques du commerce et sur l'information et la protection du consommateur, modifiée par la loi du 25 mai 1999 transposant la directive européenne concernant la protection des consommateurs en matière de contrats à distance.	1 November 1999?
Kypros	Ο περί της Σύναψης Καταναλωτικών Συμβάσεων εξ Αποστάσεως Νόμος του 2000 (Ν.14(I)/2000)	28 March 2000
Česká republika	Zákon č. 367/2000 Sb., kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů, a některé další zákony	1 January 2001
Danmark	Bekendtgørelse af lov om visse forbrugeraftaler (Dørsalg mv., fjernsalg og løbende tjenesteydelser) (Forbrugeraftaleloven), som ændret ved lov nr 262 af 6. maj 1993, lov nr. 1098 af 21.december og lov nr. 442 af 31. maj 2000.	1 June 2000 and 1 July 2000
Eesti	Võlaõigusseadus RT I 2004, 37, 255	1 May 2004
Suomi	Laki kuluttajansuojalain muuttamisesta, 15.12.2000 (Suomen säädöskokoelma 2000 N° 1072) Laki sopimattomasta menettelystä elinkeinotoiminnassa annetun lain 2 §:n muuttamisesta, 15.12.2000 (Suomen säädöskokoelma 2000 N° 1073).	1 March 2001
France	Articles 5 à 15 de l'ordonnance n° 2001-741 du 23 août 2001 et Article 36 de la Loi n°2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne	25 August 2001
Deutschland	Gesetz über Fernabsatzverträge und andere Fragen des Verbraucherrechts sowie zur Umstellung von Vorschriften auf Euro vom 27. Juni 2000	30 June 2000
Ellás	Κοινή Υπουργική Απόφαση Ζ1-496/2000 περί πωλήσεων από απόσταση και συγκριτικής διαφήμισης, τροποποιητική του Ν.2251/94 για την Προστασία των Καταναλωτών	18 December 2000
Magyarország	1997. évi CLV. törvény a fogyasztóvédelemről 17/1999. (II. 5.) Korm. rendelet a távollévők között kötött szerződésekről	No information
Ireland	European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communication) Regulations 2001 (S.I. 207 of 2001)	15 May 2001

Italia	Decreto Legislativo 6 settembre 2005, n.206, “Codice del consumo, a norma dell’ articolo 7 della legge 29 luglio 2003, n.229”.	23 October 2005 (originally transposed in a decree taking effect in October 1999)
Latvija	Patērētāju tiesību aizsardzības likums, Grozījumi: 22.11.2001. likums Miniostu kabineta 2002.gada.28 maija noteikumi Nr 207 “Noteikumi par distances līgumi”	No information
Lietuva	Lietuvos Respublikos vartotojų teisių gynimo įstatymo pakeitimo įstatymas Nr. VIII – 1946 (nauja redakcija) Lietuvos Respublikos ūkio ministro 2001 m. rugpjūčio 17 d. įsakymas Nr.258 „Dėl daiktų pardavimo ir paslaugų teikimo, kai sutartys sudaromos naudojant ryšio priemones, taisyklių patvirtinimo	No information
Luxembourg	Loi du 16 avril 2003 concernant la protection des consommateurs en matière de contrats à distance et abrogeant l’article 7 de la loi modifiée du 25 août 1983 relative à la protection juridique du consommateur	11 May 2003
Malta	Distance Selling Regulations (LN186/01) Consumer Affairs Act (Chapter 378)	1 January 2002
Nederland	Wet van 21.12.2000 tot aanpassing van Boek 7 van het Burgerlijk Wetboek aan richtlijn nr. 97/7/EG van het Europees Parlement en de Raad van de Europese Unie van 20 mei 1997 betreffende de bescherming van de consument bij op afstand gesloten overeenkomsten (PbEG L 144) (21.12.2000)	1 February 2001
Polska	Ustawa z dnia 2 marca 2000r. o ochronie niektórych praw konsumentów oraz o odpowiedzialności za szkodę wyrządzoną przez produkt niebezpieczny	30 June 2000
Portugal	Decreto-Lei nº 143/2001 de 26 de Abril 2000	25 May 2001
Slovenska republika	Zákon č. 108/2000 Z. z. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji	1 April 2000
Slovenija	Zakon o varstvu potrošnikov - uradno prečiščeno besedilo (N 700-01/190-6/24 (ZVPot-UPB1))	2003
España	Ley 47/2002, de 19 de diciembre, de reforma de la Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista, para la transposición al ordenamiento jurídico español de la Directiva 97/7/CE, en materia de contratos a distancia, y para la adaptación de la Ley a diversas Directivas comunitarias	1 January 2003
Sverige	Lag (2000:274) om konsumentskydd vid distansavtal och hemförsäljningsavtal	1 June 2000
United Kingdom	The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No. 2334) as amended by The Consumer Protection (Distance Selling) (Amendment) Regulations 2005 (SI 2005 No. 689)	31 October 2000

ANNEX II

QUESTIONS FOR PUBLIC CONSULTATION

The Commission wishes to collect the Member States and stakeholders' views on the application of the Directive and its suitability for new market conditions and/or products. To this end, a list of questions for public consultation has been compiled. These should be examined alongside the Report to which the Questionnaire is annexed in order to get a full picture of the issues the Commission has identified so far in the field of distance selling. Submissions on problems which have not been raised in the Report or this Questionnaire are also welcome.

After the consultation period has ended, the Commission will publish a summary of responses on its website. Responses and comments of interested parties will also be made public on the internet site of the European Commission, unless the sender explicitly requests otherwise. These responses will be fed into the evidence base which is currently being gathered in order to pursue the broader work on the review of the consumer regulatory framework.

The Commission will also assess the need for organising a public hearing to further the debate on the issues raised in the Report and this Questionnaire. In doing so, the Commission will also take into account the outcome of the public consultation which will be launched by the Green Paper on the broader review of the consumer regulatory framework. This Green Paper will take stock of the state of play of the work of the review of the acquis. On the basis of the evidence gathered so far, it will also set out possible options for reform of the consumer regulatory framework and seek the views of Member States and stakeholders on the best way forward. Adoption of this Green Paper is planned for the autumn 2006.

All interested parties who wish to respond to this Questionnaire should submit replies to the European Commission by 21.11.2006. Please answer as fully as possible and send your comments (marked "First consultation on the Distance Selling Directive") to either:

European Commission
Directorate-General for Health and Consumer Protection
Rue de la Loi 200
B-1049 Brussels
Belgium

or by e-mail to SANCO-B2@ec.europa.eu.

Article 2 – Definitions

1. Are the current definitions of “*consumer*” and “*supplier*” adequate for the purposes of the field regulated by Directive 97/7/EC? (*this issue will also be considered in the broader consumer acquis review work*)
2. Is the current definition of a “*distance contract*” clear enough? In particular, is the term “*organised distance sales or service provision scheme*” clear or should consumer protection be extended to all distance contracts regardless of whether the supplier usually trades at a distance?
3. Is the current definition of “*means of distance communication*” clear enough?
4. Is there any added value to “*operator of means of distance communication*” being defined?
5. Are definitions unclear in relation to any other concept, or are there other concepts relating to distance selling in need of definition?

Article 3 – Exemptions

6. Do the current exemptions need to be revised, expanded or repealed in the light of new market developments (e.g. downloading of music or other services) and/or technologies (e.g. emergence of m-commerce) or interpretation problems (e.g. European Court of Justice ruling on the EasyCar case in which it was decided that car hire amounts to a “*transport service*” and is as a consequence excluded from the scope of the Directive; use of broad terminology such as “*leisure services*”)?
7. Has the insertion of a definition of financial services by Article 18 of Directive 2002/65 in the Directive) solved any transposition problems Member States may have originally encountered when transposing the Directive? (*this issue will be considered in more detail in the course of the review of Directive 2002/65*)
8. Does the exemption covering the construction and sale of immovable property or rights related to immovable property cause any interpretation problem e.g. interaction of this Directive with the Timeshare Directive?
9. Should auctions or specific types of auctions be covered by the Directive?

Article 4 – Prior information

10. Can Article 4 be improved (e.g. clearer provisions concerning timing and/or format of the prior information; introduction of additional requirements or repeal of certain requirements)?
11. Are all groups of consumers (e.g. minors) sufficiently protected by the Directive? If not, how can their protection be improved?

Article 5 – Written confirmation

12. Can Article 5 be improved e.g. introduction of a definition of “*durable medium*” as defined in Directive 2002/65/EC; introduction of further information to be confirmed in writing or deletion of some information)

13. Would the merger of the information requirements at Article 4(1) and 5(1) simplify these rules for both consumers and suppliers?

Article 6 – Right of withdrawal

14. Do you think the length of the distance selling cooling off period should be harmonised across the Member States and if, so how long should this period be? (*the issue of whether the length of the cooling off periods in the different consumer directives should be harmonised across the acquis will be considered in the broader consumer acquis review work. However, you may wish to comment here*)?

15. Do the rules concerning the exercise of the right of withdrawal and its consequences need to be clarified?

16. Do the current exemptions to the right of withdrawal need to be revised, expanded or repealed in the light of new market developments and/or technologies?

17. Should the provisions concerning the cost of return be harmonised in the field of distance selling and if so, who should pay the cost of return? (*this issue will also be considered in the broader consumer acquis review work*)

Article 7 - Performance

18. Do the provisions of Article 7 ensure proper performance of distance contracts e.g. are the rules concerning timing and form clear?

19. Should the optional provision concerning substitute goods at Article 7(3) be made compulsory to raise the level of consumer protection evenly across the Internal Market?

Article 10

20. Should Article 10 be expressly repealed to clarify the relationship between Article 10 and the Directive 2002/58/EC on privacy and electronic communications?

General questions

21. How has the use of the minimal clause i.e. the possibility for Member States to retain or introduce provisions offering a higher standard of consumer protection affected cross border trade and competition e.g. has it constituted a hindrance to cross-border trade or raised obstacles to the exercise of the right of establishment? If so, please give examples.

22. Have you encountered any other problem with the regulation of distance selling as it currently stands?

23. Do you feel that there are other aspects of distance selling that require regulation?

ANNEX III

CONSUMER DIRECTIVES UNDER REVIEW

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 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59.

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

Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis, OJ L 280, 29.10.1994, p. 83.

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997, p. 19.

Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, OJ L 80, 18.3.1998, p. 27.

Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166, 11.6.1998, p. 51.

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12.

ANNEX IV

LENGTH OF THE COOLING OFF PERIOD IN THE MEMBER STATES

Member State	Length of cooling off period
Austria	7 working days (expressly excludes Saturday)
Belgium	7 working days
Cyprus	14 days
Czech Republic	14 days
Denmark	14 days
Estonia	14 days
Finland	14 days
France	7 working days? (meaning of “jours francs” in need of clarification)
Germany	2 weeks
Greece	10 working days
Hungary	8 working days
Ireland	7 working days
Italy	10 working days
Latvia	14 days minimum
Lithuania	7 working days
Luxembourg	7 working days
Malta	15 days
Netherlands	7 working days
Poland	10 days
Portugal	14 days
Slovakia	7 working days
Slovenia	15 days
Spain	7 working days based on the law of country of delivery
Sweden	14 days
United Kingdom	7 working days