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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3], in the light of the joint text approved by the Conciliation Committee on 27 November 1996,

(1) Whereas, in connection with the attainment of the aims of the internal market, measures must be taken for the gradual consolidation of that market;

(2) Whereas the free movement of goods and services affects not only the business sector but also private individuals; whereas it means that consumers should be able to have access to the goods and services of another Member State on the same terms as the population of that State;

(3) Whereas, for consumers, cross-border distance selling could be one of the main tangible results of the completion of the internal market, as noted, *inter alia,* in the communication from the Commission to the Council entitled 'Towards a single market in distribution'; whereas it is essential to the smooth operation of the internal market for consumers to be able to have dealings with a business outside their country, even if it has a subsidiary in the consumer's country of residence;

(4) Whereas the introduction of new technologies is increasing the number of ways for consumers to obtain information about offers anywhere in the Community and to place orders; whereas some Member States have already taken different or diverging measures to protect consumers in respect of distance selling, which has had a detrimental effect on competition between businesses in the internal market; whereas it is therefore necessary to introduce at Community level a minimum set of common rules in this area;

(5) Whereas paragraphs 18 and 19 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy [4] point to the need to protect the purchasers of goods or services from demands for payment for unsolicited goods and from high-pressure selling methods;

(6) Whereas paragraph 33 of the communication from the Commission to the Council entitled 'A new impetus for consumer protection policy', which was approved by the Council resolution of 23 June 1986 [5], states that the Commission will submit proposals regarding the use of new information technologies enabling consumers to place orders with suppliers from their homes;

(7) Whereas the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy [6] calls upon the Commission to give priority to the areas referred to in the Annex to that resolution; whereas that Annex refers to new technologies involving teleshopping; whereas the Commission has responded to that resolution by adopting a three-year action plan for consumer protection policy in the European Economic Community (1990-1992); whereas that plan provides for the adoption of a Directive;

(8) Whereas the languages used for distance contracts are a matter for the Member States;

(9) Whereas contracts negotiated at a distance involve the use of one or more means of distance communication; whereas the various means of communication are used as part of an organized distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer;

[1] OJ No C 156, 23. 6. 1992, p. 14 and OJ No C 308, 15. 11. 1993, p. 18.
[2] OJ No C 19, 25. 1. 1993, p. 111.
[3] Opinion of the European Parliament of 26 May 1993 (OJ No C 176, 28. 6. 1993, p. 95), Council common position of 29 June 1995 (OJ No C 288, 30. 10. 1995, p. 1) and Decision of the European Parliament of 13 December 1995 (OJ No C 17, 22. 1. 1996, p. 51). Decision of the European Parliament of 16 January 1997 and Council Decision of 20 January 1997.
[4] OJ No C 92, 25. 4. 1975, p. 1.
[5] OJ No C 167, 5. 7. 1986, p. 1.
[6] OJ No C 294, 22. 11. 1989, p. 1.

whereas the constant development of those means of communication does not allow an exhaustive list to be compiled but does require principles to be defined which are valid even for those which are not as yet in widespread use;

(10) Whereas the same transaction comprising successive operations or a series of separate operations over a period of time may give rise to different legal descriptions depending on the law of the Member States; whereas the provisions of this Directive cannot be applied differently according to the law of the Member States, subject to their recourse to Article 14; whereas, to that end, there is therefore reason to consider that there must at least be compliance with the provisions of this Directive at the time of the first of a series of successive operations or the first of a series of separate operations over a period of time which may be considered as forming a whole, whether that operation or series of operations are the subject of a single contract or successive, separate contracts;

(11) Whereas the use of means of distance communication must not lead to a reduction in the information provided to the consumer, whereas the information that is required to be sent to the consumer should therefore be determined, whatever the means of communication used; whereas the information supplied must also comply with the other relevant Community rules, in particular those in Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (1); whereas, if exceptions are made to the obligation to provide information, it is up to the consumer, on a discretionary basis, to request certain basic information such as the identity of the supplier, the main characteristics of the goods or services and their price;

(12) Whereas in the case of communication by telephone it is appropriate that the consumer receive enough information at the beginning of the conversation to decide whether or not to continue;

(13) Whereas information disseminated by certain electronic technologies is often ephemeral in nature insofar as it is not received on a permanent medium; whereas the consumer must therefore receive written notice in good time of the information necessary for proper performance of the contract;

(14) Whereas the consumer is not able actually to see the product or ascertain the nature of the service provided before concluding the contract; whereas provision should be made, unless otherwise specified in this Directive, for a right of withdrawal from the contract; whereas, if this right is to be more than formal, the costs, if any, borne by the consumer when exercising the right of withdrawal must be limited to the direct costs for returning the goods; whereas this right of withdrawal shall be without prejudice to the consumer's rights under national laws, with particular regard to the receipt of damaged products and services or of products and services not corresponding to the description given in the offer of such products or services; whereas it is for the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal;

(15) Whereas it is also necessary to prescribe a time limit for performance of the contract if this is not specified at the time of ordering;

(16) Whereas the promotional technique involving the dispatch of a product or the provision of a service to the consumer in return for payment without a prior request from, or the explicit agreement of, the consumer cannot be permitted, unless a substitute product or service is involved;

(17) Whereas the principles set out in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 apply; whereas the consumer's right to privacy, particularly as regards freedom from certain particularly intrusive means of communication, should be recognized; whereas specific limits on the use of such means should therefore be stipulated; whereas Member States should take appropriate measures to protect effectively those consumers, who do not wish to be contacted through certain means of communication, against such contacts, without prejudice to the particular safeguards available to the consumer under Community legislation concerning the protection of personal data and privacy;

(18) Whereas it is important for the minimum binding rules contained in this Directive to be supplemented where appropriate by voluntary arrangements among the traders concerned, in line with Commission recommendation 92/295/EEC of 7 April 1992 on codes of practice for the protection of consumers in respect of contracts negotiated at a distance (2);

(19) Whereas in the interest of optimum consumer protection it is important for consumers to be satisfactorily informed of the provisions of this Directive and of codes of practice that may exist in this field;

(1) OJ No L 250, 19. 9. 1984, p. 17.

(2) OJ No L 156, 10. 6. 1992, p. 21.