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Directive 2011/83/EU of 25 October 2011 on consumer rights was published in the OJEU on 22 November 2011, with the objective of encouraging distance selling in the internal market by affording greater protection to European consumers and by offering traders a common legal framework.

The first version of this text, which provided for maximum harmonisation for all consumer contracts, had caused an outcry as some countries, including France, considered it to be a step backwards for consumer rights.

Three years later, the text has been considerably simplified to focus mainly on **distance contracts** (particularly mail order and e-commerce) and **off-premises contracts** (corresponding to the French concept of démarchage (canvassing)).¹

Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises and Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts are therefore repealed and replaced by the new Directive.

As the institutions wanted full harmonisation, **Member States will not be able to provide, in their domestic laws, any stricter or more flexible provisions than those laid down in the Directive, save those exhaustively mentioned.** However, Member States are required to lay down the applicable penalties for infringements of the new provisions.

This new Directive contains the following main measures:

1) The Directive provides a list of information to be provided to consumers. Besides the information already specified in the French Consumer Code, the Directive provides an information requirement regarding the total price of the product and the associated costs (consumers will not have to pay any costs which they have not been clearly informed about). Consumers should also be informed of the existence of an after-sales service, the requirement of a deposit or financial guarantee, or the application of relevant codes of conduct. The sale of digital content is specifically covered, as traders will be required to inform consumers of the functionalities of such content, the protection measures applicable to them and any relevant interoperability with hardware or software. Finally, information requirements regarding the right of withdrawal are substantially heightened.

All of this information must be provided to consumers before the conclusion of the contract, it being specified that some of this information must also be provided "before an order is placed", when the order implies an obligation for the consumer to pay. According to our analysis of the Directive, it seems that this will require traders to provide such specific information on the page presenting each product or service.

2) The Directive also provides that when placing a distance order, the consumer should be explicitly informed of the moment when payment will be required. The "double-click" principle is therefore heightened, by providing an indication such as "order with an obligation to pay". Traders are also prohibited from pre-ticking boxes for the acceptance of additional paid goods or services. Also, consumers should not be charged any extra costs for using any given means of payment.

3) The withdrawal period granted to consumers for distance and off-premises contracts is extended to 14 calendar days and a model withdrawal form should be provided to the consumer so that he may exercise this right. If the trader fails to inform consumers of their right of withdrawal, such right is extended to 12 months. In case of withdrawal, the trader is required to fully refund the consumer within a period of 14 days of being informed of the withdrawal. The only costs the consumer will have to bear are the costs of returning the goods (provided the trader has informed the consumer of this) and the diminished value of the goods, if they have been handled other than what is necessary to establish their nature, characteristics and functioning. The trader may also withhold the reimbursement until he has received the goods back.

4) The trader is, in principle, required to deliver the goods within a maximum period of 30 days, after which the consumer, after having called upon the trader to make delivery, is entitled to terminate the contract and request full reimbursement of his order. It should be noted that risks pass to the consumer when he acquires physical possession of the goods.

The Directive should be implemented by Member States by 13 December 2013, for entry into force before 13 June 2014. It marks the first step towards a Europeanization of consumer law, which is expected to continue with the proposed European contract law, recently put back on the agenda. It is also likely to have an impact on the bill to improve the rights, protection and information of consumers adopted by the French National Assembly on 11 October and currently in its first reading before the Senate./.



(1) Gambling, financial services, creations, acquisitions and transfers of immovable property, package holidays, passenger transport, use of timeshare products and foodstuffs intended for current consumption physically supplied on rounds are excluded from the scope of the Directive.

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