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Department of Jobs, Enterprise and Innovation

CONSULTATION ON THE IMPLEMENTATION OF DIRECTIVE 2011/83/EU ON CONSUMER RIGHTS

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EXECUTIVE SUMMARY

1. Directive 2011/83/EU on Consumer Rights [the Consumer Rights Directive] must be transposed into national law by EU member states by 13 December 2013 and must be applied in member states from 13 June 2014. Despite its title, the Directive does not constitute a general code of consumer rights. The majority of its provisions apply only to off-premises contracts (contracts concluded away from the trader's premises, such as in the consumer's home or workplace), and distance contracts (contracts concluded by means of distance communication, such as contracts concluded online, over the telephone, or by post). The full text of the Directive can be found at Annex II of this paper.

2. The principal aspects of business-to-consumer contracts dealt with by the Directive are as follows:

- The information to be given to the consumer before he or she concludes a contract for goods, services or digital content on the trader's premises (Chapter II).
- The information to be given to the consumer before he or she concludes an off-premises or distance contract for goods, services or digital content (Chapter III, Articles 6-8).
- The right of the consumer to withdraw from an off-premises or distance contract for goods, services or digital content, and the responsibilities of the consumer where he or she withdraws from such a contract (Chapter III, Articles 9-16).
- Rules relating to delivery and the passing of risk in contracts for the sale of goods, whether on-premises, off-premises or distance contracts (Chapter IV, Articles 18 and 20).
- Rules relating to fees for the use of means of payment (Chapter IV, Article 19), the charge to the consumer for telephone communication with the trader after the conclusion of the contract (Chapter IV, Article 21), and payments by the consumer additional to those agreed for the main obligation under the contract (Chapter IV, Article 22). These provisions apply to contracts for goods, services or digital content, whether on-premises, off-premises or distance contracts.

As a public consultation has already taken place on Articles 19 (Fees for the use of means of payment) and 22 (Additional payments) of the Directive, the paper does not consider or seek views on these Articles.

3. The Directive makes a number of important amendments to the provisions of the existing Directives on Off-Premises and Distance Contracts which it will repeal and replace - notably an increase from 7 to 14 days in the duration of the period within which consumers may withdraw from such contracts - and also contains some significant new provisions. Its most salient feature, however, is that, with the exception of Chapter II and a small number of provisions that are optional for Member States, it is a maximum harmonisation instrument. This means that Member States cannot go beyond, or add to, the Directive's harmonised provisions in national legislation. Accordingly, the questions on which views are sought in this consultation relate, first, to the scope of the Directive and the possible extension of its provisions to certain contracts outside that scope; secondly, to the Directive's optional provisions; and, thirdly, to matters relating to the enforcement of the Directive. These questions are collated at Annex I of the paper. The Department's proposals on the various matters at issue are subject to review in the light of responses to this consultation.

EXTENSION OF THE DIRECTIVE'S PROVISIONS TO CONTRACTS OUTSIDE ITS SCOPE

4. Contracts in a sizeable number of sectors – including social services, healthcare, financial services, immovable property, the construction or substantial conversion of buildings, the rental of residential accommodation, passenger transport and gambling – are outside the scope of all or most of the Directive's provisions. As the harmonisation of national laws effected by the Directive governs only transactions that come within its scope, Member States are free to apply legislative provisions similar to those in the Directive to contracts outside that scope.

5. No application of the Directive's core provisions on information and withdrawal rights to contracts outside its scope is contemplated in the following cases:

- Contracts in sectors and activities that are the subject of sector-specific European Union consumer protection legislation (and in some cases, additional national consumer protection rules) and in which the creation of an additional layer of regulation would not be in the interests of traders or consumers – financial services, passenger transport, package travel, and timeshare.
- Contracts that, by virtue of their specificity and complexity, are unsuited to regulation by European Union-wide provisions of a general kind – contracts for immovable property or rights in immovable property, the construction or substantial conversion of buildings and the rental of residential accommodation.
- Contracts to which the application of the Directive’s provisions would be disproportionate or impractical – one-off contracts with telecoms providers; contracts concluded by means of automatic vending machines or automated commercial premises; contracts requiring the involvement of a public office-holder such as a notary; and contracts for foodstuffs, beverages and household staples supplied by traders on regular rounds to the consumer’s home.

The views sought on the possible extension of the Directive’s core provisions on consumer information and the right of withdrawal to contracts outside its scope relate accordingly to social services, healthcare and gambling.

6. It is proposed to apply the Directive’s provisions on consumer information and the right of withdrawal to contracts for social services and healthcare. Both sectors are covered by the corresponding provisions in the existing Directives on off-premises and distance contracts. In some cases, those entering into such contracts may be vulnerable consumers at risk from pressure selling tactics. The exclusion of these contracts from the Regulations that will give effect to the Directive would represent, therefore, a diminution of protection for consumers who may be in need of such protection. Gambling contracts are currently subject to the information provisions of the Directives on Off-Premises and Distance Contracts, but are excluded from the right of withdrawal under the latter Directive. Views are sought on the application of the Directive’s information requirements to off-premises and distance gambling contracts, but no such extension of the right of withdrawal is proposed.

7. A number of contracts exempted from the scope of the Directive – healthcare, foodstuffs and other goods supplied on regular rounds, and those concluded by means of automatic vending machines – involve contracts for the sale of goods in some or all cases. There is no good reason in the Department’s view for the exemption of any contracts of sale, including off-premises contracts with a value of less than €50, from the scope of the Directive’s provisions on delivery and the passing of risk in contracts for the sale of goods. There are no such exemptions from the provisions on risk and delivery in the Sale of Goods Acts or from the related provisions of the Regulations that give effect to the EU Directive on the Sale of Consumer Goods.

8. The Directive’s provision on telephone communication with traders provides that, where a trader operates a customer helpline for the purpose of dealing with queries or complaints from consumers about goods purchased or services supplied, the consumer should not have to pay more than the basic rate for the call. It is proposed to apply this provision to all of the contracts outside the scope of the Directive, including financial services.

OPTIONAL PROVISIONS OF THE DIRECTIVE

EXEMPTION FOR LOW-VALUE OFF-PREMISES CONTRACTS

9. Member States can opt not to apply the provisions of the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed €50 or, alternatively, to fix a monetary threshold of less than €50 in national legislation. This exemption mirrors a similar discretionary option in the existing Directive on Off-Premises Contracts, an option implemented in the Regulations which give effect to that Directive in Ireland. The rationale for the exemption of relatively low-value off-premises contracts remains valid in the Department’s view, and it is proposed accordingly to exempt off-premises contracts with a value of less than €50 from the scope of the Directive’s provisions on consumer information and withdrawal rights.

EXEMPTION FOR DAY-TO-DAY ON-PREMISES CONTRACTS PERFORMED IMMEDIATELY

10. Member States can also opt not to apply the Directive's information requirements to contracts for goods or services of a routine nature that are concluded on the trader's premises and performed on the spot, such as in-store purchases of groceries or other household staples. The Department does not consider that there is a compelling argument for mandatory information requirements in the case of such contracts, and proposes to avail of the option to exempt them from these requirements.

LIGHTER INFORMATION REGIME FOR OFF-PREMISES REPAIR CONTRACTS PERFORMED IMMEDIATELY

11. The Directive gives Member States the further option of applying a somewhat lighter set of information requirements to off-premises contracts for repair or maintenance work with a value of less than €200 which are performed immediately. In the Department's view, the provision provides for adequate safeguards for consumers while reducing somewhat the compliance burden on traders who undertake such work. It is proposed accordingly to avail of the discretionary option for a lighter information regime for such contracts.

DISCRETIONARY PROVISION FOR DISTANCE CONTRACTS TO BE CONCLUDED BY TELEPHONE

12. The Directive, lastly, gives Member States the option to provide that, where a distance contract is to be concluded by telephone, the trader has to confirm his offer to the consumer who is bound only after he has signed this offer or has sent his written consent. Member States may additionally require that the trader's confirmation must be in writing or on another durable medium. In cases where the telephone contact that leads to the contract is initiated by the consumer, a requirement for written consent by the consumer and/or confirmation of the trader's offer on a durable medium, would, in the Department's view, impose too great a burden on traders, without conferring a commensurate benefit on consumers. There is a stronger, though not necessarily conclusive, case for applying the Directive's optional provision in cases where the telephone contact was initiated by the trader. Views are sought accordingly as to whether distance contracts to be concluded by telephone should be subject to the provision in such cases.

ENFORCEMENT

13. The Directive requires Member States to ensure that adequate and effective means exist to ensure compliance with its provisions. This requires that the National Consumer Agency and, if appropriate other enforcement authorities, be empowered to apply to the courts for an order prohibiting a trader from engaging in breaches of the Directive. Though the Regulations that give effect to other consumer protection Directives allow for such an application to be made only to the High Court or Circuit Court, the Agency considers that permitting it also, where appropriate, to seek an order in the District Court would facilitate speedier and more cost-effective enforcement. The case for permitting the Agency to apply for an order in the District Court has merit in the Department's view, and it is proposed to include a provision to this effect in the Regulations to give effect to the Directive.

14. It is further proposed in the case of all provisions of the Directive other than those on delivery and the passing of risk in contracts of sale to empower the National Consumer Agency to bring criminal proceedings for alleged breaches by traders. This should not be seen as indicative of a heavy-handed approach to enforcement. The Regulations that give effect to the existing Directives on Off-Premises and Distance Contracts make provision for criminal enforcement, and there is no evidence that this has led to an over-reliance on criminal sanctions. The Agency's policy is to pursue court proceedings only where it is clear that traders are unwilling or unable to comply voluntarily with their legal obligations. The omission of criminal law enforcement for the provisions relating to contracts of sale reflects the fact that the related provisions in the Sale of Goods Act 1893 and 1980 and the Regulations that give effect to the EU Directive on Consumer Sales are enforceable only by the buyer under contract law. It would be anomalous accordingly in the Department's view to provide for an additional enforcement mechanism for the Directive's provisions on delivery and the passing of risk.

15. In addition to any enforcement action that may be taken by the Agency, it is proposed in a number of instances – such as where a trader fails to comply with the requirement to reimburse payments received from a consumer who has exercised

the right to withdraw from the contract – to give the consumer a right of private redress. It is proposed also to prohibit claims for payment by traders that are in breach of the provisions of the Directive. Traders should have a right of redress, however, against consumers who fail to comply with the obligation to return goods, or pay for the part-performance of services, which have been subject to the exercise of the right of withdrawal.

Responses to Consultation

16. Responses to the consultation should be sent by Monday 1 July by e-mail to conspol@djei.ie or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2. Queries about the consultation can be addressed to Bridget Cosgrave by e-mail at bridget.cosgrave@djei.ie or by phone at (01) 6312611.

Publication of Responses to Consultation Paper

17. It is proposed to make the responses to the consultation paper available on the Department of Jobs, Enterprise and Innovation website. Any material contained in submissions made in response to the consultation that respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Department in response to requests under the Freedom of Information Acts 1997-2003. Any information that is regarded as commercially sensitive should be clearly identified and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Acts, the Department will consult with respondents about information identified as commercially sensitive before making a decision on a freedom of information request.

I INTRODUCTION

1. Directive 2011/83/EU on Consumer Rights [the Consumer Rights Directive] was published in November 2011.¹ It must be transposed into national law by EU member states by 13 December 2013 and must be applied in member states from 13 June 2014. Despite its title, the Directive does not constitute a general code of consumer rights.² The majority of its substantive provisions apply only to off-premises contracts (contracts concluded away from the trader's premises, such as in the consumer's home or workplace), and distance contracts (contracts concluded by means of distance communication, such as contracts concluded online, over the telephone, or by post). The full text of the Directive can be found at Annex II of this paper.

2. The principal aspects of business-to-consumer contracts dealt with by the Directive are as follows:

- The information to be given to the consumer before he or she concludes a contract for goods, services or digital content on the trader's premises (Chapter II).
- The information to be given to the consumer before he or she concludes an off-premises or distance contract for goods, services or digital content (Chapter III, Articles 6-8).
- The right of the consumer to withdraw from an off-premises or distance contract for goods, services or digital content, and the responsibilities of the consumer where he or she withdraws from such a contract (Chapter III, Articles 9-16).
- Rules relating to delivery and the passing of risk in contracts for the sale of goods, whether on-premises, off-premises or distance contracts (Chapter IV, Articles 18 and 20).

¹ *Official Journal of the European Union*, L/304/64, 22.11.2011.

² The proposal for the Directive as first published in October 2008 included provisions on consumer sales contracts and unfair terms in consumer contracts that were deleted from the final text due to a lack of consensus among Member States as to whether or not these should apply on a maximum harmonisation basis.

- Rules relating to fees for the use of means of payment, the charge to the consumer for telephone communication with the trader after the conclusion of the contract, and payments by the consumer additional to those agreed for the main obligation under the contract (Chapter IV, Articles 19, 21 and 22). These provisions apply to contracts for goods, services or digital content, whether on-premises, off-premises or distance contracts.

The main features of the different types of contract regulated by the Directive (on-premises, off-premises, distance, sales, service, digital content) are set out more fully in Part II of this paper. As a public consultation has already taken place on Articles 19 (Fees for the use of means of payment) and 22 (Additional payments) of the Directive, this paper does not consider or seek views on these Articles.³

3. The Consumer Rights Directive will, as of 13 June 2014, replace Directive 85/577/EEC on Contracts Negotiated Away From Business Premises and Directive 97/7/EC on Distance Contracts.⁴ Though the new Directive makes a number of important amendments to the provisions of the existing Directives and contains some significant additional provisions, its most salient feature is that, with the exception of Chapter II and a small number of provisions that are optional for Member States, it is a maximum harmonisation instrument. This means that Member States cannot go beyond, or add to, the Directive's maximum harmonisation provisions in national legislation.⁵ The Directives which the Consumer Rights Directive is to replace are, by contrast, minimum harmonisation instruments whose provisions could be exceeded in national legislation.

³ Department of Jobs, Enterprise and Innovation. 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*, <http://www.djei.ie/publications/commerce/2012/arts19&22crd.pdf>.

⁴ Directive 85/577/EEC on Contracts Negotiated Away From Business Premises was given effect in Ireland by the European Communities (Cancellation of Contracts Negotiated Away From Business Premises) Regulations 1989 (S.I. No. 224 of 1989). Directive 97/7/EC on Distance Contracts was given effect by the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication (S.I. No. 207 of 2001).

⁵ Article 4 of the Directive (Level of Harmonisation) states that 'Member States shall 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, unless otherwise provided for in this Directive'. As Article 3(6) of the Directive states, however, the Directive does not prevent traders from offering consumers contractual arrangements that go beyond the Directive's protections.

4. The full harmonisation status of the Directive is central to its stated objective of contributing to the better functioning of the European Union's Internal Market.⁶ In the view of the European Commission, differences in consumer protection laws in EU Member States resulting from the minimum harmonisation status of existing Directives make traders reluctant to sell goods and services to consumers in other Member States and leave consumers uncertain as to their rights if they buy goods and services from traders in other Member States. Accordingly, a single regulatory framework based on uniform rules that would apply in all Member States would, to the benefit of consumers and traders alike, help eliminate barriers to cross-border trade resulting from disparities in national consumer protection laws. The impact assessment for the Directive undertaken by the European Commission estimates that the compliance cost of the consumer protection rules governing distance contracts for a trader selling goods or services to 27 EU Member States would be around €2,000 for fully harmonised rules compared with a cost of €70,000 if those rules were to continue to differ from Member State to Member State.⁷ Estimates of this kind are necessarily speculative, and the Directive does not fully harmonise all consumer protection rules relevant to distance contracts, but it is reasonable to assume that compliance costs for traders selling to other Member States will be lower under a harmonised regime than under a fragmented one.

5. The maximum harmonisation status of most of the Directive's provisions places very real limits on the degree of discretion available to Member States in transposing these provisions. Aspects of the provisions on which there would have been a range of implementation options if the Directive were a minimum harmonisation instrument are subject to a greater degree of constraint under a maximum harmonisation regime. As a consequence, the questions on which views are sought in this consultation relate, first, to the scope of the Directive and the possible

⁶ Article 1 of the Directive states that its purpose 'is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between traders and consumers.'

⁷ European Commission. 2008. *Working Document Accompanying the Proposal for a Directive on Consumer Rights: Impact Assessment Report*, pp. 38-39.

extension of its provisions to certain contracts outside that scope; secondly, to the Directive's optional provisions; and, thirdly, to matters relating to the enforcement of the Directive. These questions can be found at a number of points throughout the paper and are collated at Annex I. While some of the questions may not be relevant to all respondents, the Department would welcome the views of stakeholders on those aspects of the Directive's provisions of interest or concern to them.

6. It is proposed, as far as practicable, to adhere to the wording of the Directive in the Statutory Instrument that will give effect to its provisions and to provide clarification of those provisions in guidance to be issued by the National Consumer Agency. Differences in wording between the texts of Directives and of implementing Regulations can be a cause of confusion and uncertainty. In the event of a conflict or inconsistency between the two texts, the wording of the Directive would take precedence.⁸

7. As the provisions on the scope of the application of the Directive determine the contracts to which it does, and does not, apply, it is necessary to begin with an account of those provisions. Subsequent sections of the consultation paper deal with the substantive provisions on consumer information; the consumer's right to withdraw from off-premises and distance contracts; delivery and the passing of risk in sales contracts; and charges for telephone communications by consumers with traders. The final section of the paper discusses issues and options relating to the enforcement of the Directive's provisions.

II SCOPE OF THE DIRECTIVE

8. The scope and structure of the Consumer Rights Directive are not straightforward and necessitate an account, first, of the various types of contract – consumer, on-premises, off-premises, distance, sales, service and digital content – to which

⁸ In *Nathan v Bailey Gibson* ([1998] 2 IR 262), the Supreme Court stated that:
It is also well established that national or domestic courts in interpreting a provision of national law designed to implement the provisions of a directive, should interpret their national law in the light of the wording and the purpose of the directive in order to achieve the results envisaged by the directive.

different Chapters and provisions of the Directive apply. There is a need, secondly, for an account of the sizeable range of contracts that are outside the scope of the Directive and to which Member States may opt to apply national legislative provisions corresponding to those in the Directive. The next sections look at each of these issues in turn.

CONTRACTS BETWEEN TRADER AND CONSUMER

9. The most general provision governing the scope of the Directive limits its application to contracts concluded between a trader and a consumer. Article 3(1) states as follows:

This Directive shall apply under the conditions and to the extent set out in its provisions to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

The Directive does not apply accordingly to non-contractual transactions between traders and consumers, to contracts between traders, or to contracts the parties to which are not traders and consumers.⁹

10. Article 2(2) of the Directive defines 'trader' as:

any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive.

Article 2(1) defines 'consumer' as

any natural person who in contracts covered by this Directive is acting for purposes which are outside his trade, business, craft or profession.

Recital 17 of the Directive states that:

... in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as to not to be predominant in the overall context of the contract, that person should also be considered a consumer.

⁹ As Recital (8) states, the Directive does not affect 'contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements.'

Where, for example, a person buys a laptop that is used for both business and personal purposes, the transaction will be regarded as a consumer contract if the business purpose is 'so limited as not to be predominant in the overall context of the contract'. This clarification is based in part on the decision of the European Court of Justice in *Johann Gruber v Bay Wa AG*,¹⁰ a case concerning the interpretation of the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters.¹¹ Recitals in EU legislation use 'non-mandatory language and must not be capable of confusion with the enacting terms'.¹² It is not proposed accordingly to incorporate this clarification in the Regulations that will give effect to the Directive, but to deal with it rather in the accompanying guidance.

NATURE OF THE CONTRACT

11. With the exception of Articles 18 and 20 which apply only to contracts for the sale of goods, the Directive's core provisions apply alike to contracts for the sale of goods, the supply of services, and the supply of digital content.¹³ Article 2(3) defines 'goods' as:

any tangible movable items, with the exception of items sold by way of execution or otherwise by of authority of law; water, gas, and electricity shall be considered as goods within the meaning of this Directive where they are put up for sale in a limited volume of set quantity.

Article 2(6) defines 'service contract' as:

any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof.

Article 2(11) defines 'digital content' as 'data which are produced and supplied in digital form'. Recital 19 elaborates as follows on this definition:

Digital content means data which are produced and supplied in digital form such as computer programs, applications, games, music, videos or texts, irrespective of

¹⁰ Case C-464/01.

¹¹ The Convention was substantially replaced by Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. This is due to be replaced in turn from 2015 by Regulation (EU) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

¹² *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of Legislation within the Community Institutions*, para. 10.1.

¹³ Some provisions may be relevant, however, only to certain types of contract. The requirement to inform consumers of the existence of a legal guarantee of conformity for goods, for example, is clearly applicable only to contracts for the sale of goods.

whether they are accessed through downloading or streaming, from a tangible medium or any other source. Contracts for the supply of digital content should fall within the scope of this Directive. If digital content is supplied on a tangible medium, such as a CD or a DVD, it should be considered as goods within the meaning of this Directive... contracts for digital content which is not supplied on a tangible medium should be classified, for the purpose of this Directive, neither as sales contracts nor as service contracts.

OFF-PREMISES CONTRACTS

12. Article 2(8) of the Directive defines 'off-premises contract' as:

any contract between the trader and the consumer:

- a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;¹⁴
- b) for which an offer was made by the consumer in the same circumstances as referred to in point (a);
- c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader; or
- d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods and services to the consumer.

13. Contracts concluded in the consumer's home or workplace – or contracts for which an offer was made in the consumer's home or workplace – come within the definition of 'off-premises contract' regardless of whether or not the trader's visit to the home or workplace was made at the request of the consumer. Contracts concluded on the trader's business premises or through any means of distance communication (such as telephone, e-mail, fax, Internet or mail) also come within the definition if concluded immediately after the consumer was 'personally and individually addressed in an off-premises context.'¹⁵ This situation does not cover cases where the trader 'first comes to the consumer's home strictly with a view to

¹⁴ Article 2(9) of the Directive defines 'business premises' as:

- a) any immovable retail premises where the trader carries on his activity on a permanent basis; or
- b) any movable retail premises where the trader carries on his business on a usual basis;

As stated in recital 22, the definition includes premises in whatever form (such as shops, market stalls, fair stands or lorries) that serve as a permanent or usual place of business for the trader. Spaces accessible to the public – such as streets, shopping malls, beaches, sports facilities and public transport that the trader uses on an exceptional basis for his business activities, as well as private homes or residences, are not to be regarded as business premises.

¹⁵ Recital 21.

taking measurements or giving an estimate without any commitment of the consumer and where the contract is then concluded at a later point in time on the business premises of the trader, or via means of distance communication, on the basis of the trader's estimate'.¹⁶ In such instances, the contract is not to be considered as having been concluded immediately after the trader has addressed the consumer if the latter has had time to reflect on the trader's estimate before concluding the contract.

DISCRETIONARY EXEMPTION FOR LOW-VALUE OFF-PREMISES CONTRACTS

14. Article 3(4) of the Directive permits Member States not to apply the provisions of the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed €50. Member States are free also to fix a monetary threshold of less than €50 in national legislation. This exemption mirrors a similar discretionary option in the existing Directive on Off-Premises Contracts which permits Member States to limit the Directive's provisions to contracts above a specified amount not in excess of €60.¹⁷ Ireland chose to avail of this option in the Regulations that give effect to the Directive. Regulation 3(2) of the European Communities (Cancellation of Contracts Negotiated Away From Business Premises) Regulations 1989 provide that their provisions do not apply to 'any contract the consideration whereof is less than £40', equivalent to €50.79.¹⁸

15. The rationale for the exemption of low-value off-premises contracts is essentially that many such transactions – for example, window-cleaning, lawn-mowing or similar services – tend to be informal in nature, do not appear to give rise to significant levels of consumer detriment, and do not readily lend themselves to the application of the Directive's provisions on information and withdrawal rights. Enforcement of these provisions can also prove difficult in such cases. This rationale

¹⁶ Ibid.

¹⁷ Article 3(1) of the Directive set the maximum threshold at 60 ECU, the ECU being the European Community's unit of account prior to its replacement at parity by the euro in 1999.

¹⁸ Seventeen Member States availed of this discretionary option and fixed the threshold at various amounts between €10 and €60. Ten Member States opted to apply the Directive's provisions to all off-premises contracts. European Commission. 2008. *Commission Staff Working Document: Accompanying Document to the Proposal for a Directive on Consumer Rights*, p. 178.

remains valid in the Department's view and, subject to review in the light of the responses to this consultation, it is proposed accordingly to exempt off-premises contracts below a value of €50 from the scope of the Regulations to give effect to the Consumer Rights Directive. It is relevant to note in this context that the €50 threshold that has applied in Ireland since 1989 would, when introduced, have been substantially higher in inflation-adjusted terms than the €50 maximum provided for in the new Directive and proposed for inclusion in the implementing Regulations.

16. The proposed exemption for relatively low-value off-premises contracts will apply only to the Directive's provisions on consumer information and withdrawal rights. The exemption in the existing Directive on off-premises contracts covers only these rights, and the exemption in the new Directive appears to have been framed largely with these rights in mind. Off-premises contracts with a value of less than €50 will be subject accordingly to the Directive's provisions on delivery and the passing of risk in sales contracts discussed in Part VII of this paper and those on telephone communication with the trader discussed in Part VIII. The Consultation Paper on Articles 19 and 22 of the Directive previously proposed that these provisions should also apply to off-premises contracts below €50.¹⁹

Question 1

Should the implementing Regulations avail of the option to exempt off-premises contracts with a value of less than €50 from the Directive's provisions on consumer information and the right of the consumer to withdraw from the contract. If not, should there be (a) no threshold or (b) a threshold set at an amount less than €50. If the latter, please state the threshold that should apply in your view.

DISTANCE CONTRACTS

17. Article 2(7) of the Directive defines 'distance contract' as:

any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous

¹⁹ Department of Jobs, Enterprise and Innovation. 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*, paragraphs 74-75.

physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

This definition is similar in substance to the definition in Directive 97/7/EC on Distance Contracts that it is to replace.²⁰ It encompasses transactions where the consumer visits the trader's business premises merely for the purpose of gathering information about goods or services and subsequently negotiates and concludes the contract at a distance.²¹ If the consumer negotiates the contract on the trader's premises and subsequently concludes it by means of distance communication, however, it will not be regarded as a distance contract. The Directive's definition of distance contract also excludes contracts initiated by means of distance communication but concluded on the trader's premises, as well as reservations made by the consumer online or by phone to request the provision of a service such as a hairdressing appointment.²² The concept of 'organised distance sales or service provision scheme' that forms part of the definition includes schemes offered by a third party other than the trader but used by the trader, such as online trading platforms. It does not, however, cover cases where a website simply offers information on the trader, his or her goods or services and contact details.

ON-PREMISES CONTRACTS

18. Chapter II of the Directive deals with consumer information for 'contracts other than distance or off-premises contracts'. These are referred to as 'on-premises contracts' in the paper. This type of contract is not defined in the Directive but essentially comprises consumer contracts concluded on the trader's premises in the presence of both consumer and trader, or a person acting in the name or on behalf of the trader.

²⁰ Article 2(1) of Directive 97/7/EC defines 'distance contract' as 'any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.'

²¹ Recital 20.

²² Ibid.

III CONTRACTS OUTSIDE THE SCOPE OF THE DIRECTIVE

19. Article 3(3) of the Directive provides that the Directive will not apply to contracts in the sectors and activities listed in Box 1 across. These exemptions from the scope of the Directive were adopted for different reasons. Some were included because the sectors in question were already subject to detailed regulation under EU legislation. This applies in particular to financial services, package travel, timeshare, and passenger transport.²³ The exemptions for contracts in the areas of immovable property, social services, healthcare and gambling were adopted because it was considered that the nature of these activities made them inappropriate to regulation by European Union legislation along the lines proposed in the Directive and more suited to regulation tailored to circumstances and requirements in individual Member States.²⁴ The exemptions for vending machines; one-off contracts with telecoms providers (such as contracts for the single use of a payphone); the supply of foodstuffs, beverages etc on a regular basis to the consumer's home (such as milk deliveries); and contracts requiring the involvement of a public office-holder (such as a notary) reflect a view that the application of the Directive's provisions would be impractical or disproportionate having regard to the nature and purpose of these contracts.

²³ Recital (32) of the Directive states that the 'existing Union legislation, inter alia, relating to consumer financial services, package travel, and timeshare contains numerous rules on consumer protection. For this reason, this Directive should not apply to contracts in those areas.' Recital 27 states that passenger transport 'should be excluded from the scope of this Directive as it is already subject to other Union legislation or, in the case of public transport and taxis, to regulation at national level', but adds that the 'provisions of the Directive protecting consumers against excessive fees for the use of means of payment or against hidden costs should apply also to passenger transport contracts.'

²⁴ 'Contracts related to the transfer of immovable property or of rights in immovable property or to the creation or acquisition of such immovable property or rights, contracts for the construction of new buildings as well as contracts for the rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation... The provisions of this Directive are not appropriate to those contracts which should be therefore excluded from its scope.' (Recital 26). 'Social services have fundamentally distinct features that are reflected in sector-specific legislation, partially at Union level and partially at national level... The provisions of this Directive are not appropriate to social services which should be therefore excluded from its scope.' (Recital 29). 'Healthcare requires special regulations because of its technical complexity, its importance as a service of general interest as well as its extensive public funding... The provisions of this Directive are not appropriate to healthcare which should therefore be excluded from its scope.' (Recital 30).

BOX 1
EXEMPTIONS FROM SCOPE OF CONSUMER RIGHTS DIRECTIVE

Contracts -

- a) for social services, including social housing, childcare, and support of families and persons permanently or temporarily in need, including long-term care;
- b) for healthcare, as defined in point (a) of Article 3 of Directive 2011/24/EU,²⁵ whether or not they are provided via healthcare facilities;
- c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;
- d) for financial services;²⁶
- e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- g) which fall within the scope of Council Directive 90/314/EEC on package travel, package holidays and package tours;²⁷
- h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;²⁸
- i) which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22;²⁹
- l) concluded by means of automatic vending machines or automated commercial premises;
- m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

²⁵ This defines 'healthcare' as 'health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices'.

²⁶ Defined in Article 2(12) of the Directive as 'any service of a banking, credit, insurance, personal pension, investment or payment nature'.

²⁷ Given effect in Ireland by the Transport (Travel Trade) Acts 1982 and 1995.

²⁸ Given effect in Ireland by the European Union (Protection of Consumers in respect of Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations 2011, S.I. No. 73/2011.

²⁹ Recital 8 states that, in relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by the Directive with the exception of the right of withdrawal. Article 8(2) of the Directive deals with information and related obligations on the trader where 'a distance contract to be concluded by electronic means places the consumer under an obligation to pay'. As stated at paragraph 2, Articles 19 (Fees for the use of means of payment) and 22 (Additional payments) are not dealt with in this consultation paper.

20. The harmonisation of national laws effected by the Directive governs only those transactions that come within its scope. Member States are free accordingly to apply legislative provisions similar to those in the Directive to the sectors and transactions outlined in Box 1. Recital 13 states that:

Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive.

21. Whether or not, or in which instances, the discretionary option thus accorded Member States should be exercised is one of the main questions on which views are sought in later parts of this paper. In general, no application of the Directive's core provisions on information and withdrawal rights to contracts outside its scope is contemplated in the following cases:

- Contracts in sectors and activities that are the subject of sector-specific European Union consumer protection legislation (and in some cases, additional national consumer protection rules) and in which the creation of an additional layer of regulation would not be in the interests of traders or consumers – financial services,³⁰ passenger transport,³¹ package travel,³² and timeshare.³³
- Contracts that, by virtue of their specificity and complexity, are unsuited to regulation by European Union-wide provisions of a general kind – contracts for immovable property or rights in immovable property, the construction or conversion of buildings and the rental of accommodation for residential property.
- Contracts to which the application of the Directive's provisions would be disproportionate or impractical – one-off contracts with telecoms providers;

³⁰ Directive 2002/65/EC on Distance Marketing of Consumer Financial Services. Directive 2008/48/EC on Consumer Credit.

³¹ Regulation (EC) No. 261/2004 on Denied Boarding, Cancellation and Delays for Air Passengers; Regulation (EC) No. 1008/2008 on Common Rules for the Operation of Air Services; Regulation (EC) No. 1371/2007 on Rail Passengers' Rights and Obligations; Regulation (EU) No. 1177/2010 on Passenger Rights in Maritime and Inland Waterway Transport; Regulation (EU) No. 181/2011 on the Rights of Passengers in Bus and Coach Transport.

³² Directive 90/314/EEC on Package Travel, Package Holidays and Package Tours.

³³ Directive 2008/122/EC on Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts.

contracts concluded by means of automatic vending machines or automated commercial premises; contracts requiring the involvement of a public office-holder such as a notary; and contracts for foodstuffs, beverages and household staples supplied by traders on regular rounds to the consumer's home.

The views sought on the possible extension of the Directive's provisions on consumer information and the right of withdrawal to sectors and activities outside its scope relate in the main, therefore, to social and healthcare services and gambling. As outlined at Parts VII and VIII, a broader extension to sectors exempted from the Scope of the Directive is proposed in the cases of Articles 18 and 20 on delivery and passing of risk in sales contracts and Article 21 on charges to consumers for telephone communication with traders. As previously indicated in the consultation paper on Articles 19 and 22 of the Directive, a similar extension is also proposed in the case of these provisions.³⁴

22. It is important to clarify the effect of including sectors exempted from the scope of the Directive within the scope of the implementing Regulations in Ireland, or of availing of discretionary or minimum harmonisation provisions in the Directive. Any such additions to the scope or substance of the Directive in the implementing Regulations would obviously apply to contracts between a trader based in Ireland and a consumer based in Ireland. Their application to contracts between consumers located in Ireland and traders located in other Member States would be determined by the relevant provisions of the Rome I Regulation on the Law Applicable to Contractual Obligations.³⁵ Article 6(1) of the Regulation provides that the law applicable to consumer contracts³⁶ will be the law of the country where the consumer has his habitual place of residence if the trader either –

³⁴ Department of Jobs, Enterprise and Innovation. 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*, op. cit., paragraphs 69-73.

³⁵ Regulation (EC) No 593/2008.

³⁶ Article 6 of the Rome I Regulation does not apply to contracts for the supply of services where the services are to be supplied to a consumer exclusively in a country other than his or her country of habitual residence; contracts for carriage other than package travel contracts within the meaning of the Package Travel Directive; contracts relating to a rights or tenancies in immovable property other than timeshare contracts within the meaning of the Timeshare Directive; rights and obligations which

- a) pursues his commercial or professional activities in the consumer's country of residence, or
- b) by any means, directs his commercial or professional activities to the consumer's country of residence.³⁷

23. If a consumer contract does not satisfy the conditions of Article 6(1) of the Rome I Regulation, it will be governed by the law of the country chosen by the parties as the applicable law for the contract or, in the absence of such a choice, by the law of the country where the seller has his habitual residence. If the consumer and the trader choose the law of the trader's country of residence as the applicable law for the contract, however, Article 6(2) of the Regulation provides that such a choice may not have the effect of depriving the consumer of the protections of mandatory provisions of the law in his or her country of residence. Irish consumers who conclude distance contracts for goods or services with traders in other Member States would in most, cases, therefore, enjoy the protections of extensions to the scope of the Directive effected by the implementing Regulations in Ireland.

constitute a financial obligation and certain other rights and obligations relating to the issuance or offer to the public, and public take-over bids, of transferable securities insofar as these activities do not constitute provision of a financial service; and contracts concluded within a multi-lateral system which brings together, or facilitates the bringing together, of multiple third-party buying and selling instruments in financial instruments.

³⁷ The European Court of Justice has ruled that, for the purpose of determining whether a trader whose activity is presented on a website can be considered to be 'directing' his activity to the Member State in which the consumer is resident, 'it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of the consumer's domicile, in the sense that it was minded to conclude a contract with them.' It added that the following non-exhaustive matters were 'capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States.' Joined Cases C-585/08 *Peter Pammer v Reederei Karl Schluter GmbH & Co KG* and C-144/09 *Hotel Alpenhof GesmbH v Oliver Heller*.

IV CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS

24. Article 5 of Chapter II of the Directive sets out the information that the trader must provide before a consumer is bound by a contract other than a distance or off-premises contract or any corresponding offer. The Article applies to all consumer contracts for goods, services or digital content concluded on the trader's premises other than the contracts exempted from the scope of the Directive listed in Box 1. The information to be provided by the trader relates, among other things, to the main characteristics of the goods, services or digital content; the identity, address and contact details of the trader; the price of the goods, services or digital content; the arrangements for payment, delivery and complaint handling; the existence and conditions of after-sales service and commercial guarantees; and the duration of the contract and the conditions for its termination. In the case of digital content, the trader must, where applicable, provide information on the functionality (including applicable technical protection measures) of the content, and on any relevant inter-operability of the digital content with hardware or software of which the trader is, or can reasonably be expected to be, aware.

25. While information requirements for off-premises and distance contracts are a well-established feature of EU consumer protection legislation, a general requirement on traders to provide information in on-premises transactions is relatively novel. In the case of off-premises transactions, the rationale for such information requirements is that the consumer may have little or no knowledge of the trader and may not have an opportunity to view the product before concluding the contract. In the case of distance contracts, the consumer may similarly have little or no knowledge of the trader and will not be in a position to inspect the product prior to delivery. Where the consumer concludes a contract for goods or services on the trader's premises, however, he will typically have a greater knowledge of the trader's identity, should be in a position to put questions to the trader, and will generally be able to view and inspect any goods being purchased.

26. Article 5 of the Directive recognises in a number of ways accordingly that consumers need less extensive protection in respect of information requirements in on-premises transactions than in off-premises or distance transactions. First, Article 5(1) states that the obligation on the trader to provide the required information applies only where ‘that information is not already apparent from the context’. Where a consumer purchases goods in a local store or supermarket, for example, the main characteristics of the goods, the identity of the trader, and the delivery arrangements are likely to be readily apparent from the context. Secondly, while the information to be provided in distance and off-premises contracts is subject to a range of formal requirements,³⁸ Article 5 merely stipulates that the trader shall provide the information ‘in a clear and comprehensible manner’. Given the face-to-face nature of on-premises transactions, it is likely that the information will be provided orally in many cases. Thirdly, while Article 6(5) states that the information to be provided in distance and off-premises contracts ‘shall form an integral part’ of the contract, there is no equivalent stipulation in the case of on-premises contracts.

DISCRETIONARY EXEMPTION FOR DAY-TO-DAY ON-PREMISES CONTRACTS PERFORMED IMMEDIATELY

27. Article 5(3) of the Directive provides that Member States can opt not to apply the information requirements under Article 5 to ‘contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion’. Subject to any clarification to the contrary in future European Commission guidance, the Department interprets ‘day-to-day’ to mean ‘regular’ or ‘routine’ rather than transactions that consumers would necessarily undertake on a daily basis. The discretionary exemption would thus cover contracts for goods or services of a

³⁸ In the case of off-premises contracts, the information must, among other things, be provided on paper or, if the consumer agrees, on another durable medium. In the case of distance contracts, the information must, among other things, be made available to the consumer in a way appropriate to the means of distance communication used and, if not provided on a durable medium prior to the conclusion of the contract, must be provided on such a medium within a reasonable time after the conclusion of the contract and, at the latest at the time of the delivery of the goods or before the performance of the service begins.

routine nature that are concluded and performed on the spot such as in-store purchases of groceries or other household staples.

28. Subject to review in the light of the responses to this consultation, the Department proposes to avail of the regulatory option under Article 5(3) to exempt day-to-day on-premises transactions performed immediately at the time of their conclusion from the Directive's information requirements. First, the rationale for mandatory information requirements on traders is less compelling in the case of on-premises transactions than in the cases of distance or off-premises transactions. Effective enforcement of the information requirements may also encounter practical difficulties in the case of on-premises transactions. Secondly, EU legislation already contains a sizeable number of provisions that impose information obligations on traders in specified sectors or contexts.³⁹ The utility of imposing additional requirements that would apply to routine transactions is open to question. In addition to the regulatory burden on traders, there is a risk of information overload on consumers that could well prove counter-productive.⁴⁰ It is not proposed for similar reasons to extend the information requirements under Article 5 to the sectors and activities listed in Box 1 that are outside the scope of the Directive.

³⁹ Directive 2005/29/EC on Unfair Commercial Practices, which was given effect in Ireland by the Consumer Protection Act 2007, requires traders to provide certain information in the case of an 'invitation to purchase'. Directive 98/6/EC on Price Indications, which was given effect in Ireland by the European Communities (Requirements to Indicate Product Prices) Regulations 2001 (S.I. No. 207 of 2001) requires traders to indicate the selling and unit price of goods. Directive 2006/123/EC on Services in the Internal Market, which was given effect in Ireland by the European Union (Provisions of Services) Regulations 2010 (S.I. No. 533 of 2010) requires Member States to ensure that service providers make a range of information available to service recipients. Directive 2000/31/EC on Electronic Commerce requires Member States to ensure that e-commerce service providers make specified information available to consumers. There are also information requirements on traders under EU legislation of more restricted scope – for example, Directive 2010/13/EU on Audiovisual Media Services; Directive 95/46/EC on Data Protection; Directive 2002/58/EC on E-Privacy; and Directive 2002/22/EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services. Article 6(8) of the Consumer Rights Directive provides that the Directive's information requirements are in addition to the information requirements contained in the Services and E-Commerce Directives, and do not prevent Member States from imposing additional information requirements in accordance with those Directives. Without prejudice to this provision, if a provision of either Directive on the content and the manner in which information is to be provided conflicts with a provision of the Consumer Rights Directive, the latter will prevail.

⁴⁰ Loos, M.B.M. et al. 2012. *Digital Content Contracts for Consumers*. Amsterdam Law School Legal Studies Research Paper No. 2012-66, 4.3.2.

Question 2

Should the implementing Regulations exempt on-premises contracts of a day-to-day kind that are performed immediately from the information requirements of Article 5 of the Directive? If not, why not?

MINIMUM HARMONISATION STATUS OF CHAPTER II

29. Unlike the other Chapters of the Directive, the information requirements contained in Article 5 of Chapter II are minimum harmonisation provisions. Article 5(4) states that Member States 'may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies'. The additional information requirements in force in Ireland of which the Department is aware appear to apply mainly to sectors and activities outside the scope of the Directive – financial services,⁴¹ property,⁴² residential tenancies,⁴³ passenger transport,⁴⁴ - or to regulate information to be provided subsequent to the conclusion of the contract, such as the information that must be given on gas and electricity bills.⁴⁵ The Department would welcome details of other applicable information requirements from respondents to the consultation. In addition to permitting Member States to maintain existing information requirements for on-premises contracts which exceed those provided for in the Directive, the minimum harmonisation clause in Article 5 will also permit new information requirements to be introduced for on-premises contracts should the need arise.

⁴¹ Central Bank. 2012. *Consumer Protection Code 2012*, pp. 20-33.

⁴² Property Services Regulatory Authority. *Code of Practice for Property Services Providers (Auctioneers and Estate Agents)*, section 3.2.

⁴³ Residential Tenancies Act 2004, sections 12, 22, 62, 70, 188 et passim.

⁴⁴ Taxi Regulation Act 2003 (Small Public Service Vehicles) (Amendment and Licensing) Regulations 2007 (S.I. No. 710/2007), Regulations 8, 16-17 and 22.

⁴⁵ Commission for Energy Regulation. *Codes of Practice for Billing of Customers and Format of Bills*.

Question 3

Please give details of any mandatory pre-contractual information requirements of which you are aware (other than those indicated in paragraph 29) that apply to on-premises transactions and which require traders to provide information additional to that required by Article 5 of the Consumer Rights Directive.

V CONSUMER INFORMATION FOR OFF-PREMISES AND DISTANCE CONTRACTS

INFORMATION REQUIREMENTS FOR OFF-PREMISES AND DISTANCE CONTRACTS

30. Article 6 (1) of Chapter III of the Directive sets out a large number of items of information – twenty in all, some of which have several elements – that the trader must provide ‘in a clear and comprehensible manner’ before ‘the consumer is bound by a distance or off-premises contract.’ In addition to information about the main characteristics and price of the goods, services or digital content and the trader’s identity, address, contact details and after-sale service, information must also be given about a number of aspects of the exercise of the right of withdrawal from the contract. The information to be provided in accordance with Article 6(1) will form ‘an integral part’ of the distance or off-premises contract.⁴⁶ If the information provided by the trader is incorrect, therefore, the consumer may have a claim for breach of contract. The burden of proof in respect of compliance with the information requirements of Chapter III of the Directive rests with the trader.⁴⁷

31. As discussed in Part IX of this paper, Member States are required to ensure that adequate and effective means exist to ensure compliance with Article 6 and other provisions of the Directive. In a number of cases, however, the Directive expressly specifies the consequences that are to result if a distance or off-premises trader fails to provide particular items of information. First, if the trader fails to provide information about additional freight, delivery, postal or other charges, the consumer

⁴⁶ Article 6(5).

⁴⁷ Article 6(9).

will not have to bear those charges. Secondly, if the trader fails to ensure that, when placing an order under a distance contract, the consumer explicitly acknowledges that the order implies an obligation to pay, the consumer will not be bound by the order or contract. Thirdly, if the trader fails to provide information about the consumer's right to withdraw from the contract, the period within which the consumer may exercise that right will be extended by twelve months.

FORMAL REQUIREMENTS FOR THE INFORMATION TO BE PROVIDED UNDER OFF-PREMISES CONTRACTS

32. In the case of off-premises contracts, the trader will have to provide the required information on paper or, if the consumer agrees, on another durable medium.⁴⁸ The information must be legible and in plain, intelligible language. The trader must also provide the consumer with a copy of the signed contract, or the confirmation of the contract, on paper or, if the consumer agrees, on another durable medium.⁴⁹

DISCRETIONARY OPTION FOR OFF-PREMISES REPAIR CONTRACTS PERFORMED IMMEDIATELY

33. Article 7(4) of the Directive gives Member States the option of applying a somewhat lighter set of pre-contractual information requirements to off-premises contracts where –

- a) the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance,
- b) the trader and the consumer immediately perform their contractual obligations, and
- c) the payment to be made by the consumer does not exceed €200.

In such cases, Member States may provide that the trader is only required, first, to provide information about his identity, address and the price of the repairs in writing or, with the customer's agreement, on another durable medium. The trader will also be required in such cases to provide information on the main characteristics of the service and on the rights and restrictions relating to the consumer's right to

⁴⁸ Article 7(1). Article 2(10) of the Directive defines 'durable medium' as '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.' Recital 23 states that durable media 'should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails'.

⁴⁹ Article 7(2).

withdraw from the contract, but may opt not to provide it on paper or another durable medium if the consumer expressly agrees. The trader's obligation to provide confirmation of the contract remains, however, and must include all of the information required by Article 6(1).

34. Subject to review in the light of responses to this consultation, it is proposed to avail of the discretionary option for a lighter information regime for off-premises contracts for immediate repair and maintenance work costing under €200. In the Department's view, the provision provides for adequate safeguards for consumers while reducing somewhat the compliance burden on traders who undertake such work.

Question 4

Should the implementing Regulations avail of the option to provide for a lighter information regime for off-premises contracts for immediate repair and maintenance work costing less than €200? If not, why not?

FORMAL REQUIREMENTS FOR DISTANCE CONTRACTS

35. Article 8(1) provides that, in a distance contract, the trader must give or make available the required pre-contractual information in plain and intelligible language in a way appropriate to the means of distance communication used. Insofar as the information is provided on a durable medium, it must be legible. If the contract is concluded through a means of distance communication that allows limited space or time to display the information – for example an SMS text – the trader is required only to provide pre-contractual information in the first instance on the main characteristics of the goods and services, the identity of the trader, the total price, and the duration of the contract and, where applicable, the conditions for its termination.⁵⁰ The trader must in all cases, however, provide the consumer with confirmation of the concluded contract on a durable medium within a reasonable time after its conclusion and, at the latest, at the time of the delivery of the goods or

⁵⁰ Article 8(4).

before the performance of the service begins.⁵¹ The confirmation must include all the pre-contractual information required under Article 6(1) unless this has already been provided on a durable medium.

36. Article 8 of the Directive includes a number of new provisions and protections governing distance contracts as follows:⁵²

- Where a distance contract which is to be concluded by electronic means places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information about the main characteristics of the goods or service; the total price; the duration of the contract and of the consumer's obligations under it and, where applicable, the conditions for terminating the contract. Unlike the other provisions of Chapter III, this provision and the requirement outlined in the next bullet point apply to distance contracts for passenger transport services.
- The trader must further ensure that, when placing an order for a distance contract to be concluded by electronic means, the consumer explicitly acknowledges that the order entails an obligation to pay. If placing an order entails activating a button or a similar function, the button or function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a similar unambiguous formulation.
- Trading websites will be required to indicate clearly and legibly no later than the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

DISCRETIONARY OPTION FOR DISTANCE CONTRACTS TO BE CONCLUDED BY TELEPHONE

37. Article 8(6) of the Directive provides that, where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only after he has signed the offer or has sent

⁵¹ Article 8(7).

⁵² It also retains the provision from Article 4(8) of the Distance Selling Directive which requires a trader who makes a telephone call to the consumer to disclose his identity and the commercial purpose of the call.

his written consent. Member States may further provide that the trader's confirmation of such an offer must be made on a durable medium.

38. There are three options as follows for Member State in respect of the provision requiring acceptance by consumers, and confirmation of offers by traders, for contracts to be concluded by telephone:

- 1) Apply the provision to all distance contracts to be concluded by telephone.
- 2) Apply the provision to such contracts where the telephone contact that leads to the contract is made by the trader.
- 3) Exempt all such contracts from the scope of the provision.

In cases where the telephone contact is initiated by the consumer, a requirement for written consent by the consumer and/or confirmation of the trader's offer on a durable medium, would, in the Department's view, impose too great a burden on traders, without conferring a commensurate benefit on consumers. Such a provision could create significant difficulties for traders in the tourism and hospitality sector, and could operate to the disadvantage of consumers who want to make quick bookings by telephone. There is a stronger, though not necessarily conclusive, case for applying the provisions of Article 8(6) to contracts concluded by telephone where the telephone contact was initiated by the trader. Though the trader will be required to provide confirmation of the contract in such a situation, consumers could conceivably conclude a contract in these circumstances after being taken by surprise by the trader's offer over the telephone. As outlined in Part VI, the consumer would not enjoy the right of withdrawal in such cases where, for example, the contract was for the provision of holiday accommodation, car rental, catering or leisure services for a specific date or period of performance. A requirement for the consumer's written consent to the trader's offer or for the confirmation of that offer on a durable medium, therefore, could help protect consumers in such cases where contracts were entered into under pressure or in haste.

Question 5

Should the implementing Regulations require the consumer's written consent to the trader's offer and/or the trader's confirmation of that offer on a durable medium?

- 1) In all distance contracts to be concluded by telephone, or**
- 2) In distance contracts to be concluded by telephone where the telephone contract leading to the contract was made by the trader, or**
- 3) In no distance contracts to be concluded by telephone.**

MAIN CHANGES TO INFORMATION REQUIREMENTS FOR DISTANCE AND OFF-PREMISES CONTRACTS

39. The main changes that the Consumer Rights Directive will make to the existing information requirements for off-premises and distance contracts are outlined at Box 2. First, a wider range of sectors and activities are exempted from the scope of the Consumer Rights Directive than from the existing Directives on off-premises and distance contracts. Secondly, the range of information required by the Consumer Rights Directive is greater than that under the existing Directives, in particular the Directive on Off-Premises Contracts. Thirdly, the formal requirements applying to the confirmation of pre-contractual information and of the contract under the Consumer Rights Directive are more extensive than those under the existing Directives.

EXTENSION OF THE DIRECTIVE'S INFORMATION REQUIREMENTS TO SOCIAL SERVICES, HEALTHCARE AND GAMBLING

SOCIAL AND HEALTHCARE SERVICES

40. As indicated at paragraph 21, the Department does not propose to avail of the option to extend the Directive's provisions to most of the sectors exempted from its scope. In the case of contracts for social services and healthcare, however, the Department considers that there is a case for extending the information rights provided for in the Directive to these sectors; a similar extension of the Directive's withdrawal rights is proposed at paragraph 54. First, both sectors are covered by the information and withdrawal provisions of the existing Directives on off-premises and

BOX 2 CHANGES TO INFORMATION REQUIREMENTS FOR DISTANCE AND OFF-PREMISES CONTRACTS

I OFF-PREMISES CONTRACTS

Scope of Information Requirements

The Consumer Rights Directive [CRD] contains a greater range of exemptions from the scope of its information requirements than the existing Directive on Off-Premises Contracts, namely: contracts for social services, healthcare services, gambling, financial services other than insurance and securities, passenger transport services, and the construction and substantial conversion of new buildings; contracts within the scope of the Package Travel and Timeshare Directives; contracts established by a public office-holder; contracts concluded by means of vending machines or automated commercial premises; contracts concluded with telecommunications operators through public payphones for their use, or concluded for the use of a single connection by telephone, Internet, or fax.

Substance of Information Requirements

The CRD imposes a broader range of information obligations on the trader than the existing Directive. The latter requires information to be provided only on the consumer's right to withdraw from the contract together with the name and address of a person against whom that right may be exercised.

Formal Requirements

The information to be provided by the trader under the existing Directive on Off-Premises Contracts must be in writing, be dated, and state particulars enabling the contract to be identified. In addition to requiring all of the required information to be given to the consumer on paper or another durable medium, the CRD requires the trader to provide the consumer with a copy of the signed contract or confirmation of the contract on paper.

II Distance Contracts

Scope of Information Requirements

The Consumer Rights Directive contains a greater range of exemptions from the scope of its information requirements than the existing Distance Selling Directive, namely: contracts for social services, healthcare services, gambling, and the construction and substantial conversion of new buildings; contracts within the scope of the Package Travel and Timeshare Directives; and contracts established by a public office-holder. The information requirements under the existing Distance Selling Directive do not apply to contracts for the provision of accommodation, transport, catering or leisure services that are to be provided on a specific date or within a specific period. While the information requirements under the Consumer Rights Directive do not apply to contracts for passenger transport and the rental of residential accommodation, they apply to contracts for non-residential accommodation, catering and leisure services. Unlike the CRD, however, the information requirements under the existing Directive do not apply to contracts concluded at auctions.

Substance of Information Requirements

The range of information to be provided by the trader under the CRD is greater than under the existing Distance Selling Directive. The additional requirements include information on the existence of a legal guarantee of conformity for goods; the existence and conditions of after-sales services and commercial guarantees; the minimum duration of the consumer's obligations under the contract; the conditions for terminating the contract; the existence and conditions of deposits or other financial guarantees payable by the consumer; the existence of, and means of access to, relevant codes of conduct; the possibility of, and means of access to, recourse to out-of-court complaint and redress mechanisms; the consumer's liability for the cost of returning goods in the case of withdrawal from the contract and, where the goods cannot be returned by post, the cost of such return; and the functionality and inter-operability of digital content.

Formal Requirements

The CRD requires the trader to provide confirmation of the concluded contract on a durable medium while the existing Directive requires only confirmation in writing or on a durable medium of the main items of information. The CRD provisions on electronic payments, delivery restrictions and accepted means of payment, and telephone calls from the trader outlined at paragraph 34 are also new.

distance contracts. In some cases, those entering into such contracts may be vulnerable consumers at risk from pressure selling tactics. The exclusion of these contracts from the Regulations that will give effect to the Directive would represent, therefore, a diminution of protection for consumers who may be in need of such protection. Secondly, the exemption of both sectors from the scope of the Directive reflected in part the view of a number of Member States that these services should not be regarded as market transactions provided on a contractual basis. In Ireland, however, there is a more pronounced market element in the provision of both social services and healthcare. Thirdly, the Directive's exemption for healthcare contracts applies only to healthcare provided by health professionals. Healthcare contracts that do not come within the precise terms of the exemption – for example dietary products or mobility aids provided by commercial traders - are covered by the Directive. It is unrealistic, however, to expect that consumers will be able to distinguish between healthcare contracts to which the Directive's provisions apply and those to which it does not apply. Extending the Directive's provisions to all healthcare contracts would eliminate this potential source of confusion and uncertainty.

Question 6

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to distance and off-premises contracts for social services? If not, why not?

Question 7

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to distance and off-premises contracts for healthcare? If not, why not?

GAMBLING CONTRACTS

41. The possible extension of the Directive's information requirements to distance and off-premises contracts for gambling also merits consideration for a number of reasons.⁵³ First, gambling of its nature is an activity that poses substantial risks to vulnerable consumers; online gambling in particular has experienced rapid growth in recent years.⁵⁴ Secondly, gambling is covered by the information provisions of the existing Directives on off-premises and distance contracts. Removing these contracts from the scope of the Regulations that will give effect to the Consumer Rights Directive would represent a diminution of consumer protection in a sector with considerable potential for consumer detriment. Thirdly, the exclusion of gambling contracts from the scope of the Directive came about in significant part because of different cultural attitudes to gambling in EU Member States. It did not reflect a view that consumers engaged in gambling contracts were not in need of legislative protection, but rather a belief that such protection was more appropriately provided at Member State than at European Union level. The main argument against extending the Directive's information provisions to gambling contracts is that such contracts are, of their nature, different from contracts for the generality of goods and services and require regulation tailored to their specific characteristics. Legislation is currently in preparation for a comprehensive Gambling Control Bill,⁵⁵ and it may be that regulation of the sector in the interests of consumers is better reserved to this legislation, particularly if it contains information requirements along the lines of those in the Consumer Rights Directive. As discussed at paragraph 55, no extension of the Directive's provisions of the right of withdrawal is proposed for gambling contracts.

⁵³ Bets made with on-course bookmakers would not be off-premises contracts within the meaning of the Directive as the Directive's definition of business premises would encompass bookmakers' stands at racecourses and other venues.

⁵⁴ Despite the economic downturn in many Member States, the annual growth rate in online gambling in the EU is almost 15 per cent. Annual revenues are expected to be in the region of €13 billion in 2015 compared with €9.3 billion in 2011. European Commission. 2012. *Communication: Towards a Comprehensive European Framework for Online Gambling* [COM (2012) 596].

⁵⁵ Department of Justice and Equality. 21 September 2011. 'Minister Shatter Announces the Preparation of a New Bill on Gambling'.

Question 8

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to gambling contracts? If not, why not.

VI RIGHT OF WITHDRAWAL FROM DISTANCE AND OFF-PREMISES CONTRACTS

42. The inclusion of a provision permitting consumers to withdraw from off-premises contracts for a period of seven days after receipt of written notice of the right of withdrawal was the main innovation of Directive 85/577/EEC. The rationale for the inclusion of this right was the 'special features' of contracts concluded away from the trader's business premises, in particular the fact that, as the trader normally initiates the contract negotiations, the consumer may be caught off guard.⁵⁶ This 'surprise element' means that consumers are often unable to compare the quality and price of the trader's offer with other offers, and should accordingly be given a right to withdraw from the contract for a cooling-off period of seven days to enable them to assess the obligations arising under it. As Directive 85/577/EEC was a minimum harmonisation measure, Member States were permitted to extend the duration of the withdrawal period in their domestic legislation. The withdrawal period adopted in Member States varies accordingly from 7 to 15 days and is expressed in calendar days in some cases and in working days in others.⁵⁷ The Regulations that give effect to the Directive in Ireland did not avail of the minimum harmonisation clause, however, and the length of the withdrawal period was fixed at seven calendar days.⁵⁸

43. Directive 97/7/EC on Distance Selling gave consumers a similar right of withdrawal for 'a period of at least seven working days' in the case of distance contracts. The rationale in the case of these contracts was that, as the consumer is unable to see the product or ascertain the nature of the service before concluding

⁵⁶ Directive 85/577/EEC on Contracts Negotiated Away from Business Premises, Recital 5.

⁵⁷ Schulte-Nolke, H. et al. 2008. *EC Consumer Law Compendium: Comparative Analysis*, pp. 194-96.

⁵⁸ European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 (S.I. No. 224/1989), Regulation 4 and Schedule.

the contract, provision should be made for a right of withdrawal.⁵⁹ The Directive's minimum harmonisation status again led to the withdrawal period varying in length from 7 to 15 days in Member States.⁶⁰ Though the Directive states that the withdrawal period should be at least seven working days, a number of Member States whose national laws provide for a longer withdrawal period have expressed this period in calendar days. The Regulations that give effect to the Directive in Ireland did not avail of the minimum harmonisation clause and fixed the length of the withdrawal period at seven working days.⁶¹

SCOPE OF THE RIGHT OF WITHDRAWAL FROM DISTANCE AND OFF-PREMISES CONTRACTS

44. Article 16 of the Consumer Rights Directive provides for a sizeable number of sectoral and other exceptions to the right of withdrawal. These exceptions are listed in Box 3. Unlike in the case of the exemptions from the scope of the Directive discussed in paragraphs 20-21, Article 16 expressly states that Member States 'shall not provide for the right of withdrawal' for the excepted contracts. All of the Directive's provisions relating to the right, exercise and effects of withdrawal in distance contracts are mandatory on Member States. There are no discretionary options corresponding to those which apply to several of the Directive's information requirements.⁶²

45. The exceptions from the right of withdrawal listed at points (a) to (d) and (i) to (l) of Box 3 are, with some differences of substance, largely similar to those under the Distance Selling Directive. One such difference concerns contracts for the provision of services where performance has begun, with the consumer's agreement, within

⁵⁹ Directive 97/7/EC on Distance Contracts, recital 14.

⁶⁰ Schulte-Nolke, *EC Consumer Law Compendium: Comparative Analysis*, op. cit., pp. 554-56.

⁶¹ European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (S.I. No. 207/2001), Regulation 6(1)(a).

⁶² In the case of off-premises contracts, Article 9(3) provides that, notwithstanding the obligation on Member States not to prohibit parties from performing their contractual obligations during the withdrawal period, Member States 'may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract'. As Ireland has no such legislation, the provision is not applicable to this country.

BOX 3

EXCEPTIONS TO THE RIGHT OF WITHDRAWAL FOR DISTANCE CONTRACTS

Article 16 of the Directive states that Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following:

- a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;
- 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 and which may occur within the withdrawal period;
- c) the supply of goods made to the consumer's specifications or clearly personalised;
- d) the supply of goods which are liable to deteriorate or expire rapidly;
- e) the supply of goods which are suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
- f) the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;
- g) the supply of alcoholic beverages, the price of which been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
- h) contracts where the consumer has specifically requested a visit from the trader for the purpose out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer, or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;
- i) the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;
- j) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such contracts;
- k) contracts concluded at a public auction;⁶³
- l) the provision of accommodation other than for residential purposes, transport of goods, car rental services, catering or services relating to leisure activities if the contract provides for a specific date or period of performance;
- m) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgement that he thereby loses his right of withdrawal.

⁶³Article 2(15) of the Directive defines 'public auction' as 'a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services.' As this definition excludes auctions on online trading platforms such as eBay, contracts concluded on such platforms following a competitive bidding process are subject to the right of withdrawal. The existing Distance Selling Directive exempts all contracts concluded at an auction and, though the exemption was not framed with eBay-type auctions in mind, would appear to exclude such auctions from its scope. A number of Member States, however, have used the Directive's minimum harmonisation clause to extend its provisions to auctions conducted on online trading platforms. The German Supreme Court has also ruled that such auctions are not to be considered as auctions for the purposes of the laws governing distance contracts. Schulte-Nolke, *EC Consumer Law Compendium: Comparative Analysis* op. cit., pp. 523-54.

the withdrawal period. The existing Directive exempts such contracts from the right of withdrawal. The Consumer Rights Directive, however, gives the consumer a right of withdrawal where the service has begun at the consumer's express request within the withdrawal period but has not been fully performed.⁶⁴ If the consumer exercises the right of withdrawal in such circumstances, he or she must pay to the trader 'an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract'.⁶⁵ The proportionate amount to be paid by the consumer in this event is to be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.

DURATION OF WITHDRAWAL PERIOD

46. The most significant change in the Consumer Rights Directive's provisions on the right of withdrawal is the increase in the duration of the withdrawal period from seven to fourteen days.⁶⁶ While the change will not affect those Member States which already have a withdrawal period of the latter duration, it will more or less double the length of the period in Ireland.⁶⁷ As a balancing provision, however, Article 14(2) of the Directive contains a provision not found in either of the existing Directives which makes the consumer liable for any diminished value of goods subject to the exercise of the right of withdrawal that results 'from the handling of

⁶⁴ In accordance with the separate exception at Article 16(h), however, the right of withdrawal does not apply in such cases to services contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance.

⁶⁵ In the case of contracts for the performance of services or the supply of water, gas or electricity, however, the consumer bears no cost in the event of withdrawal if he or she has not expressly requested performance to begin during the withdrawal period or the trader has failed to provide the required information on the right of withdrawal and the restrictions applying to it. In the case of contracts for the supply of digital content not supplied on a tangible medium, the consumer bears no cost in the event of withdrawal if he or she has not given prior express consent to performance during the withdrawal period, has not acknowledged that he or she loses the right of withdrawal in giving such consent, and the trader has failed to provide confirmation of the contract in accordance with Articles 7(2) and 8(7) of the Directive.

⁶⁶ Article 14(1).

⁶⁷ Recital 41 clarifies that all periods contained in the Consumer Rights Directive should be understood to be expressed in calendar days. As the Distance Selling Directive provides for a minimum withdrawal period of seven working days, the length of the period is thus more than half of the fourteen calendar days provided for in the Consumer Rights Directive. The withdrawal period of seven days in the Directive on Off-Premises Contracts is expressed in calendar days.

the goods other than what is necessary to establish the nature, characteristics and functioning of the goods.’ Recital 46 clarifies that, in order to establish the nature, characteristics and functioning of the goods, the consumer ‘should only handle and inspect them in the same manner as he would be allowed to do in a shop.’ The consumer is not liable for any diminished value of the goods, however, where the trader has failed to provide the required information on the existence of a right of withdrawal and the conditions, time limits and procedures for the exercise of that right.

CALCULATION OF WITHDRAWAL PERIOD

47. In the case of service contracts, contracts for digital content not supplied on a tangible medium and contracts for the supply of water, gas or electricity not put up for sale in a limited volume or set quantity, the withdrawal period expires after 14 days from the day of the conclusion of the contract. In the case of contracts for the sale of goods, the withdrawal period ordinarily expires after 14 days from the day on which the consumer acquires physical possession of the goods. Special rules govern the expiry of the withdrawal period in contracts for the sale of goods in the following circumstances:

- 1) In the case of multiple goods ordered by the consumer in one order and delivered separately, the withdrawal period expires after 14 days from the day on which the consumer acquires physical possession of the last good.
- 2) In the case of delivery of a good consisting of multiple lots or pieces, the period expires after 14 days from the day on which the consumer acquires physical possession of the last lot or piece.
- 3) In the case of contracts for regular delivery of goods during a defined period of time, the period expires after 14 days from the day on which the consumer acquires physical possession of the first good.

48. As noted at paragraph 31, however, Article 10 of the Directive provides that, if the trader has not provided the consumer with the required information on the right of withdrawal, the withdrawal period will expire 12 months from the end of the initial withdrawal period. If the trader has provided the consumer with the required information on the right of withdrawal within 12 months of the conclusion of a

contract for services or the consumer's acquiring physical possession of the goods, the withdrawal period will expire 14 days after the day upon which the consumer receives the information. This extension of the withdrawal period where traders fail to provide consumers with the required information on the right of withdrawal represents a significant sanction. Though the value of the goods is likely to diminish appreciably over a period of up to twelve months, the consumer is not liable, moreover, for any such diminished value where the trader has failed to inform him or her of the right of withdrawal. The present Distance Selling Directive, by contrast, provides only for a maximum withdrawal period of three months where the trader fails to meet his information obligations under the Directive.⁶⁸ The existing Off-Premises Directive, however, provides that the consumer's right to cancel the contract applies for a period of not less than seven days from his or her receipt of written notice from the trader of the right of cancellation.⁶⁹ In *Heininger v Bayerische Hypo- und Vereinsbank*,⁷⁰ the European Court of Justice held that the withdrawal period in off-premises contracts did not commence until the consumer had been informed about his or her right of withdrawal. If the consumer had not received the required information on the right of withdrawal, therefore, Member States were precluded from imposing a time-limit of one year, or other duration, on the length of the withdrawal period. The effect of the ECJ judgment is that the withdrawal period can potentially be of indefinite duration in the case of off-premises contracts.⁷¹ The extension of up to 12 months in the duration of the withdrawal period provided for in the Consumer Rights Directive can be seen, therefore, as a compromise between the three-month extension of the period provided for in the Distance Selling Directive and the potentially indefinite extension applicable under the Directive on Off-Premises Contracts.

EFFECTS OF WITHDRAWAL ON ANCILLARY CONTRACTS

49. Article 12 of the Directive provides that the consumer's exercise of the right of withdrawal terminates the obligations of the parties to perform the distance or

⁶⁸ Article 6(1).

⁶⁹ Article 5.

⁷⁰ Case C-481/99.

⁷¹ In practice, however, the duration of the period would be subject to national rules on prescription.

off-premises contract or to conclude the contract in cases where an offer was made by the consumer. Article 15 further provides that, where the consumer exercises his or her right of withdrawal, 'any ancillary contracts shall be automatically terminated without any costs for the consumer, except as provided for in Article 13(2) and Article 14 of this Directive.'⁷² Article 2(15) defines 'ancillary contract' as:

a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.

Ancillary contracts, therefore, could include credit agreements,⁷³ maintenance or service contracts, or contracts for extended warranties for goods. The rationale for the automatic termination of such contracts is that the value of the right of withdrawal would clearly be lessened if directly related contracts had to remain in force where the consumer exercised this right.

50. The existing Directive on Distance Selling provides for the cancellation of credit agreements linked to contracts for goods or services subject to the exercise of the right of withdrawal.⁷⁴ The provision in the Consumer Rights Directive represents, therefore, an extension of this provision to all linked contracts within the meaning of the Directive's definition of 'ancillary contract'. As in the case of the existing provision on credit agreements, the Consumer Rights Directive requires Member States to lay down detailed rules on the termination of ancillary contracts.⁷⁵ The Department is of the view that the rules relating to ancillary contracts should build on the rules at Regulation 8 of the Regulations that give effect to the Distance Selling Directive and should provide as follows:

⁷² The costs under Article 13(2) relate to non-standard delivery costs. Those under Article 14 include the cost of returning goods subject to the right of withdrawal, costs in respect of the diminished value of goods, and costs in respect of proportionate payment for services performed prior to the exercise of the right of withdrawal.

⁷³ Though credit or other financial services contracts are outside the scope of the Directive, they may still be ancillary contracts within the meaning, and for the purpose, of the Directive. The existing Distance Selling Directive also exempts financial services from its scope, yet makes express provision for the cancellation of credit agreements linked to a distance contract in respect of which the consumer has exercised the right of withdrawal.

⁷⁴ Directive 97/7/EC on Distance Contracts, Article 6(4).

⁷⁵ Article 15(2).

- If the trader with whom the consumer has the principal contract is not party to the ancillary contract, that trader must promptly inform the trader party to the ancillary contract of the consumer's withdrawal from the contract.
- Subject to the deduction of permitted costs under Articles 13(2) and 14, the trader party to the ancillary contract must reimburse any full or part payments or deposits made, and return any property provided as security, by the consumer, within a period not exceeding thirty days.
- Where the ancillary contract involves a credit agreement on which interest is payable, the consumer will not be liable for interest payments if he or she repays the total sum owed within a specified period of the notice of withdrawal.

Question 9

Are the proposed rules relating to the cancellation of ancillary contracts clear and fair? Do they need to be supplemented in general or in respect of particular types of ancillary contract? Is requiring the trader party to the ancillary contract to reimburse the consumer the best way to proceed, or should the trader party to the principal contract be responsible for reimbursements arising from the ancillary contract?

EXERCISE OF THE RIGHT OF WITHDRAWAL BY THE CONSUMER

51. Article 11 of the Directive deals with the exercise of the right of withdrawal by the consumer. It provides, first, that for the purpose of informing the trader of his or her decision to withdraw from the contract, the consumer may either use the model withdrawal form at Annex I(B) of Directive or make 'any other unequivocal statement setting out his decision to withdraw from the contract.' The trader may also give the consumer the option of submitting either the model form or the unequivocal statement of withdrawal electronically on the trader's website. While simply returning the goods to the trader is sufficient for the purpose of withdrawing from the contract under the present Distance Selling Directive, it will not suffice for

this purpose in future. The burden of proof in respect of the exercise of the right of withdrawal is on the consumer.⁷⁶

OBLIGATIONS OF TRADER AND CONSUMER IN THE EVENT OF WITHDRAWAL

52. The trader's principal obligation in the event of the consumer's withdrawal from the contract is to reimburse all payments received from the consumer⁷⁷ without undue delay and not later than 14 days from the day on which he is informed of the consumer's decision to withdraw.⁷⁸ Unless the trader has offered to collect the goods himself, he may withhold reimbursement until he has received the goods back or the consumer has supplied evidence of having sent back the goods, whichever is the earliest. This provision is new to the Consumer Rights Directive and is in part a further measure intended to balance the increase in the duration of the withdrawal period.

53. The consumer's principal obligation in the event of withdrawal is to send back or hand over the goods to the trader without undue delay and not later than 14 days from the day on which he or she informed the trader of the decision to withdraw from the contract.⁷⁹ The direct cost of returning the goods falls on the consumer unless the trader has agreed to bear this cost or has failed to inform the consumer that he or she must bear it. In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, however, the trader must collect the goods at his own expense if the nature of the goods is such that they cannot normally be returned by post.

EXTENSION OF RIGHT OF WITHDRAWAL TO DISTANCE AND OFF-PREMISES CONTRACTS FOR SOCIAL AND HEALTHCARE SERVICES

54. As indicated at paragraph 40, it is proposed to extend the Directive's provisions on consumer information to distance and off-premises contracts for social services

⁷⁶ Article 11(4).

⁷⁷ Other than any supplementary costs arising from the consumer's choice of a type of delivery other than the least expensive type of standard delivery offered by the trader.

⁷⁸ Article 13.

⁷⁹ Article 14.

and healthcare. It is also proposed for reasons similar to those outlined there to extend the right of withdrawal to these contracts. The right of withdrawal applies to consumer contracts in these sectors under the existing Directives on Distance and Off-Premises Contracts, and the Department is not aware of any reason why it should not continue to apply to them. If off-premises or distance contracts for social services or healthcare come within any of the exceptions to the right of withdrawal listed in Box 3 – for example if they involve the supply of sealed goods which were unsealed after delivery and are not suitable for return on health or hygiene grounds – the right will not apply.

Question 10

Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for social services? If not, why not.

Question 11

Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for healthcare? If not, why not.

55. As outlined at paragraph 41, the extension of the Directive's information provisions to distance and off-premises contracts for gambling is an option that merits consideration. Though the information provisions of the existing Distance Selling Directive apply to contracts for gaming and lotteries, the Directive exempts these contracts from the right of withdrawal. Other considerations apart, permitting consumers to withdraw from gambling contracts for a period of fourteen days would have obvious adverse consequences for the determination of betting odds. No extension of the right of withdrawal to gambling contracts is accordingly proposed.

VII DELIVERY AND PASSING OF RISK IN CONTRACTS FOR THE SALE OF GOODS

DELIVERY

56. The delivery provision at Article 18 of the Directive provides, first, that, unless the parties have agreed otherwise, the trader must deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay but not later than 30 days from the conclusion of the contract. Recital 51 clarifies that the consumer should be considered to have control of the goods where he, or a third party indicated by him, 'has access to the goods to use them as an owner, or the ability to resell the goods (for example, when he has received the keys or possession of the ownership documents).' Where the trader has failed to deliver the goods at the time agreed with the consumer or within the 30 day default time limit, Article 18(2) provides that 'the consumer shall call upon him to make the delivery within an additional period of time appropriate to the circumstances.' The obligation on the consumer to afford the trader a second opportunity to deliver the goods does not apply, however, where:

- delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract – for example, a wedding dress which must be delivered prior to the wedding, or
- the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date, is essential.

In these cases, the consumer is entitled to terminate the contract immediately after the expiry of the delivery period initially agreed with the trader. Otherwise the consumer must afford the trader a reasonable additional period of time in which to make the delivery before he or she is permitted to terminate the contract.⁸⁰

57. Article 18 will replace the provision at Article 7 of the Distance Selling Directive which, in the absence of agreement between the parties, requires the supplier to a distance contract 'to execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order to the supplier.' Unlike

⁸⁰ Recital 52.

Article 19, the provision in the existing Directive applies to contracts for services as well as goods. Article 19 applies, however, to all forms of contract for the sale of goods, whether on-premises, off-premises or distance.

58. The delivery provision and the companion provision on the passing of risk were included in the Consumer Rights Directive partly in order to address a gap in Directive 1999/44/EC on Certain Aspects of the Sale of Goods and Associated Guarantees. That Directive's rules deal mainly with the quality standards applicable to goods and the remedies for consumers where goods fail to meet those standards, and are silent on matters relating to delivery and risk. As Recital 51 of the new Directive notes, 'the main difficulties encountered by consumers and one of the main sources of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery.' It was thought appropriate therefore that the Directive clarify and harmonise the rules in Member States on the time of delivery. Matters to do with the place and modalities of delivery remain subject to national law.

59. The time of delivery in contracts for the sale of goods is currently regulated in Ireland by section 29(2) of the Sale of Goods Act 1893. Like Article 18 of the Directive, this is a default rule and states:

Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Implementation of Article 18 of the Directive will require an amendment to the 1893 Act to provide that section 29(2) does not apply to consumer contracts of sale.

Passing of Risk

60. Article 20 of the Directive provides, first, that, in contracts where the trader dispatches the goods to the consumer, the risk of loss or damage to the goods will pass to the consumer when he, or a third party indicated by him and other than the

carrier, has acquired the physical possession of the goods.⁸¹ It provides, secondly, that, without prejudice to the rights of the consumer against the carrier, the risk will pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader. The risk of loss or damage to goods in transit will not lie with the consumer, therefore, where he or she has chosen a particular delivery method from a range of options offered by the trader.⁸²

61. The passing of risk in contracts of sale, whether commercial or consumer, is currently regulated in Ireland by section 20 of the Sale of Goods Act 1893. This provides first that, unless otherwise agreed, the goods remain at the seller's risk until the property in the goods is transferred to the buyer, but once that property is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. It provides, second, that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Unlike Article 20 of the Directive which links the passing of risk to the transfer of physical possession of the goods (i.e. delivery), the 1893 Act links it to the transfer of property in the goods.⁸³ Though the passing of property in the goods will often coincide with the transfer of physical possession, it can precede delivery in some circumstances.

62. The implementation of Article 20 of the Directive will require an amendment to section 20 of the 1893 Act to the effect that its provisions are not applicable to consumer contracts of sale. In their final report, the Sales Law Review Group recommended that section 20 should be amended to provide that risk pass with delivery, with the provision being a mandatory rule in consumer contracts of sale and a default rule in commercial contracts of sale. Though Article 20 of the Directive applies only to contracts where the trader dispatches the goods to the consumer, it

⁸¹ Recital 55 states that: 'Regarding the moment of the transfer of the risk, a consumer should be considered to have acquired the physical possession of the goods when he has received them.'

⁸² Ibid.

⁸³ The passing of property in the goods is regulated by the rules at sections 16-18 of the 1893 Act. For an account of these rules, see Sales Law Review Group. 2011. *Report on the Legislation Governing the Sale of Goods and Supply of Services*, pp. 199-220.

is not proposed to restrict the amendment of section 20 of the 1893 Act in this way. Having different rules apply to the passing of risk in consumer sales contracts depending on the modalities of delivery would result in unnecessary confusion and uncertainty.

63. The implementation of Article 20 of the Directive will also require the amendment of section 32 of the 1893 Act which provides, among other things, that delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is, *prima facie*, deemed to be a delivery of goods to the buyer. The effect of this provision is that the risk passes in principle to the buyer on delivery of the goods to the carrier. The amendments to the 1893 Act will need accordingly need to stipulate, first, that sections 32(1)-(3) of the Act will not apply to consumer contracts of sale and, second, to insert a new subsection to the effect that, in the case of such contracts, delivery of the goods to the carrier is not delivery of goods to the buyer in consumer contracts of sale unless the carrier has been contracted by the consumer to take delivery of the goods.

SCOPE OF PROVISIONS ON DELIVERY AND PASSING OF RISK

64. Most of the contracts listed in Box 1 that are outside the scope of the Directive are contracts for services and, as such, the application or otherwise of the provisions on delivery and the passing of risk in contracts of sale does not arise. A number of contracts exempted from the scope of the Directive however – healthcare, foodstuffs and other goods supplied on regular rounds, and those concluded by means of automatic vending machines – involve contracts for the sale of goods in some or all cases. There is no good reason in the Department's view for the exemption of any contracts of sale, including off-premises contracts with a value of less than €50, from the scope of Articles 18 and 20 of the Directive. There are no such exemptions from the provisions on risk and delivery in the Sale of Goods Acts. The delivery provision at Article 18 is a default rule that can be waived or altered with the agreement of the parties. The provision on the passing of risk at Article 20 should, of its nature, apply without exception to contracts of sale.

VIII COMMUNICATION WITH TRADER BY TELEPHONE

65. Article 21 of the Directive provides as follows:

Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader, is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunications services providers to charge for such calls.

This provision applies to customer helplines operated by traders for the purpose of dealing with queries or complaints from consumers about goods purchased from, or services supplied by, the trader. It does not aim to regulate the cost of individual calls to helplines by consumers – this will depend on factors such as the consumer’s telephone package, whether the call is made from a mobile phone or landline, and the place from which the call is made. It seeks rather to ensure, first, that traders will not use such helplines as a means of generating revenue from consumers and, second, that they will not use high call charges to deter consumers from contacting them with complaints or queries. Though the provision precludes traders from using customer helplines as a source of revenue, it does not require them to subsidise such services.

66. Article 21 does not cover charges for either pre-contractual enquiries or for premium rate services such as horoscope lines or directory enquiries which are paid for directly by means of the cost of the call. If a caller to such premium rate services subsequently wishes to make a complaint or query about the service by telephone, however, the cost of that call should be at a basic and not a premium rate.⁸⁴ The provision is not intended similarly to prevent traders from offering technical support for complex products such as computers at a premium rate provided that it is made clear to the consumer that this involves a contract for a separate service and that the information requirements applicable to such contracts under Chapter III of the Directive are complied with.

⁸⁴ This is in line with the requirements of the ComReg Code of Practice on Premium Rate Services. Paragraph 6.2 of the Code requires providers of premium rate telephone services to provide, or arrange for the provision of, an adequately staffed and resourced live operator helpline service during normal office hours which must be available on a telephone number priced at national rate or below.

67. Subject to review in the light of the responses to this consultation, it is proposed to apply the provisions of Article 21 to all of the contracts outside the scope of the Directive, including financial services, listed in Box 1. The exemption of financial services from the provisions of Article 19 (Fees for the use of means of payment) and Article 22 (Additional payments) proposed in the earlier consultation on those Articles reflected the fact that the Consumer Credit Act 1995 and the Consumer Protection Code for regulated financial services entities contain detailed provisions on the regulation of such fees and payments.⁸⁵ Neither the Act nor the Code, however, appear to contain provisions corresponding to Article 21 of the Directive. It is proposed similarly to apply the provisions of Article 21 to off-premises contacts with a value of less than €50.

Question 12

Should Article 21 of the Directive on Communication by Telephone apply to all consumer contracts for goods, services or digital content. If not, what exceptions should apply and why?

IX ENFORCEMENT OF THE DIRECTIVE

68. Article 23 of the Directive [Enforcement] provides as follows:

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 transposing this Directive are applied:
 - a. public bodies or their representatives;
 - b. consumer organisations having a legitimate interest in protecting consumers;
 - c. professional bodies having a legitimate interest in acting.

⁸⁵ Department of Jobs, Enterprise and Innovation. 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*, op. cit., paragraph 73.

Article 24(1) of the Directive [Penalties] states as follows:

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.

69. The Consumer Rights Directive is the most recent in a series of European Union Directives from the mid-1980s which deal with the contractual rights of consumers and the contractual and pre-contractual obligations of traders.⁸⁶ The Regulations that have given effect to these various Directives in Ireland have provided for a range of enforcement arrangements and sanctions. In the case of the first of the existing Directives to be replaced by the new Directive - Directive 85/577/EEC on Contracts Negotiated Away From Business Premises – the implementing Regulations provide mainly for criminal law enforcement, by the National Consumer Agency,⁸⁷ though the Agency may ‘for the purpose of protecting the collective interests of consumers’ also apply to the Circuit Court for an order against an infringement of the Directive under the Regulations that implement Directive 98/27/EC on Injunctions for the Protection of Consumers’ Interests.⁸⁸ The Regulations that give effect to Directive 97/7/EC on Distance Selling empower the Agency both to take criminal prosecutions for breaches of the Regulations and to apply to the High Court for an order to ensure compliance with the provisions of the Regulations. The mix of criminal and civil enforcement under these Regulations is similar to that under the legislation that

⁸⁶ The consumer contract rights Directives for which the Department of Enterprise, Jobs and Innovation has responsibility are: Directive 85/577/EEC on Contracts Negotiated Away from Business Premises implemented by the European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 (S.I. No. 224 of 1989); Directive 93/13/EEC on Unfair Terms in Consumer Contracts implemented by the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000 (S.I. No. 27 of 1995 and S.I. No. 307 of 2000); Directive 97/7/EC on Distance Contracts implemented by the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations (S.I. No. 207 of 2001); Directive 1999/44/EEC on Certain Aspects of Consumer Sales and Associated Guarantees implemented by the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. No. 11 of 2003); Directive 2000/31/EC on Electronic Commerce implemented by the Electronic Commerce Act 2000 and the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. of 68 of 2003); and Directive 2008/122/EC on Time Share, implemented by the European Union (Protection of Consumers in Respect of Time Share, Long-Term Holiday Product, Resale and Exchange Contracts (S.I. No. 73 of 2011).

⁸⁷ European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 (S.I. No. 224 of 1989), Regulation 3(6).

⁸⁸ European Communities (Court Orders For The Protection of Consumer Interests) Regulations 2010 (S.I. No. 555 of 2010).

implements EU Directives dealing with the advertising, marketing and pricing practices of traders, namely Directive 98/6/EC on Product Pricing and Directive 2005/29/EC on Unfair Commercial Practices.⁸⁹ The enforcement provisions under the Regulations that give effect to Directive 1999/44/EC on Consumer Sales and Guarantees, however, leave it up to the consumer to seek remedies for breaches of the Regulations,⁹⁰ though the National Consumer Agency may, for the purpose of protecting the collective interests of consumers, apply to the Circuit Court for an order against an infringement of the Directive under the Regulations that give effect to Directive 98/27/EC on Injunctions.

PUBLIC ENFORCEMENT

Civil Proceedings

70. If enforcement of the Directive's provisions is, as required by Article 23, to be adequate and effective, it is necessary that the National Consumer Agency and, if appropriate other enforcement authorities, be empowered to apply to the courts for an order prohibiting a trader from engaging in breaches of the Directive. At present, the Regulations that give effect to the Distance Selling Directive allow for an application only to the High Court, while those that give effect to the Injunctions Directive provide for an application to the Circuit Court. The Consumer Protection Act 2007 which gives effect to the Unfair Commercial Practices Directive provides that the Agency may apply to the Circuit or High Court for a prohibition order. The Agency considers that, in appropriate cases including cases relating to the Consumer Rights Directive, it should be possible for it also to seek an order in the District Court. In the Agency's view, this would facilitate enforcement in the consumer interest that would be speedier and less costly in appropriate cases than enforcement by means of proceedings in the Circuit or High Court. The District Court Rules provide that an appeal from a judgment of the Court lies to the Circuit Court. An action may also be

⁸⁹ Implemented by the European Communities (Requirements to Indicate Product Prices) Regulations (S.I. No. 639/2002) and the Consumer Protection Act 2007 respectively. Part V of the 2007 Act makes provision for a wide range of enforcement mechanisms in addition to civil and criminal court proceedings, including undertakings, compliance notices, fixed payment notices, and the consumer protection list.

⁹⁰ European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. No. 11 of 2003), Regulation 11.

forwarded from the District Court to the Circuit Court or the High Court where the lower Court is of the opinion that the action is one fit to be tried in the higher Court. The High Court also has jurisdiction to halt a trial in the District Court and to prohibit its continuation, though this power will be exercised only in exceptional circumstances. The case for permitting the National Consumer Agency to apply for an order in the District Court has merit in the Department's view and it is proposed to include a provision to this effect in the Regulations that will give effect to the Directive.

Question 13

Should the National Consumer Agency be empowered to apply for a court order in respect of a breach of the Directive's provisions in the District as well as the Circuit Order? If not, why not?

Criminal Proceedings

71. It is not proposed to provide for any criminal law enforcement of the provisions of Articles 18 and 20 of the Directive on delivery and the passing of risk in contracts the sale of goods. The equivalent provisions in the Sale of Goods Act 1893 and 1980 are enforceable by the buyer under contract law, and it would be anomalous in the Department's view to provide for an additional enforcement mechanism in these two instances. There is no provision for criminal law enforcement similarly in the case of the Regulations that give effect to Directive 1999/44/EC on the Sale of Consumer Goods and Associated Guarantees. It is proposed in the case of all other provisions of the Directive, however, to empower the National Consumer Agency to bring criminal proceedings for alleged breaches by traders.

72. Provision for criminal enforcement for alleged breaches of the Directive should not be seen as indicative of a heavy-handed or disproportionate approach to enforcement. Both of the Directives to be replaced by the Consumer Rights Directive make provision for criminal enforcement and there is no evidence that this has led to an over-reliance on criminal sanctions. Since its establishment, the National

Consumer Agency has followed an enforcement strategy that seeks to promote voluntary compliance where possible.⁹¹ Only where such compliance is not forthcoming, will the Agency pursue other forms of enforcement action. In the Department's view, making provision for both criminal and civil enforcement of the Directive's provisions along the lines contained in the Consumer Protection Act 2007 will give the Agency a wider and more flexible range of options with which to respond to infringements of the provisions. It will also help to bring greater consistency and coherence to the enforcement of statutory consumer protection provisions.

Question 14

Should breaches of all of the Directive's provisions other than Articles 18 and 20 on delivery and the passing of risk be subject to criminal law proceedings? If not, which provisions of the Directive are inappropriate for criminal law enforcement and why?

Private Redress

73. As outlined at paragraph 31, the Directive expressly specifies the consequences that will follow where a trader fails to comply with certain of the information requirements under Chapter III. Where a trader fails to comply with the requirement under Article 14 to reimburse all payments received from a consumer who has exercised the right to withdraw from the contract, the consumer should have a right of private redress in addition to any enforcement action that may be taken by the National Consumer Agency. This could take the form of an action for breach of contract if provision is made for the trader's obligation to reimburse the consumer to survive the cancellation of the contract. Alternatively, it could take the form of an action for breach of statutory duty by the trader. Similar private redress mechanisms have been proposed for Articles 19 and 22 of the Directive.⁹² Provision should be also made to prohibit claims for payment by traders in breach of the provisions of

⁹¹ For a statement of the Agency's enforcement policy, see its Annual Report for 2008, p. 12.

⁹² Department of Jobs, Enterprise and Innovation. 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*, op. cit., paragraphs 79-80.

the Directive along the lines of those contained in the Regulations that give effect to the Directives on Off-Premises Contracts and Distance Selling.⁹³ Traders should have a right of redress, however, against consumers who fail to comply with the obligation under Article 14 of the Directive to return goods, or pay for the part-performance of services, that have been subject to the exercise of the right of withdrawal.

Question 15

What form should the consumer's right of redress take in cases where he or she seeks to recover payments made to the trader which the trader is obliged to return under the Directive?

What form should the trader's right of redress take in the event of a failure by consumers to return goods in accordance with their obligations under the Directive?

Responses to Consultation

74. Responses to the consultation should be sent by Monday 1 July by e-mail to conspol@djei.ie or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2. Queries about the consultation can be addressed to Bridget Cosgrave by e-mail at bridget.cosgrave@djei.ie or by phone at (01) 6312611.

Publication of Responses to Consultation Paper

75. It is proposed to make the responses to the consultation paper available on the Department of Jobs, Enterprise and Innovation website. Any material contained in submissions made in response to the consultation that respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Department in response to requests under the Freedom of Information Acts

⁹³ European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 (S.I. No. 224 of 1989), Regulations 3(3) and 3(4). European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations (S.I. No. 207 of 2001), Regulation 11.

1997-2003. Any information that is regarded as commercially sensitive should be clearly identified and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Acts, the Department will consult with respondents about information identified as commercially sensitive before making a decision on a freedom of information request.

ANNEX I QUESTIONS INCLUDED IN CONSULTATION

1. Should the implementing Regulations avail of the option to exempt off-premises contracts with a value of less than €50 from the Directive's provisions on consumer information and the right to of the consumer to withdraw from the contract. If not, should there be (a) no threshold or (b) a threshold set at an amount less than €50. If the latter, please state the threshold that should apply in your view.
2. Should the implementing Regulations exempt on-premises contracts of a day-to-day kind that are performed immediately from the information requirements of Article 5 of the Directive? If not, why not?
3. Please give details of any mandatory pre-contractual information requirements of which you are aware (other than those indicated in paragraph 29) that apply to on-premises transactions and which require traders to provide information additional to that required by Article 5 of the Consumer Rights Directive.
4. Should the implementing Regulations avail of the option to provide for a lighter information regime for off-premises contracts for immediate repair and maintenance work costing less than €200? If not, why not?
5. Should the implementing Regulations require the consumer's written consent to the trader's offer and/or the trader's confirmation of that offer on a durable medium?
 - 1) In all distance contracts to be concluded by telephone, or
 - 2) In distance contracts to be concluded by telephone where the telephone contract leading to the contract was made by the trader, or
 - 3) In no distance contracts to be concluded by telephone.
6. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for social services? If not, why not?
7. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for healthcare? If not, why not?
8. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to gambling contracts? If not, why not.
9. Are the proposed rules relating to the cancellation of ancillary contracts clear and fair? Do they need to be supplemented in general or in respect of particular types of ancillary contract? Is requiring the trader party to the ancillary contract to reimburse the consumer the best way to proceed, or should the trader party to the principal contract be responsible for reimbursements arising from the ancillary contract?
10. Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for social services? If not, why not.
11. Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for healthcare? If not, why not.
12. Should Article 21 of the Directive on communication by telephone apply to all consumer contracts for goods, services or digital content? If not, what exceptions should apply and why?
13. Should the National Consumer Agency be empowered to apply for a court order in respect of a breach of the Directive's provisions in the District as well as the Circuit Order? If not, why not?
14. Should breaches of all of the Directive's provisions other than Articles 18 and 20 on delivery and the passing of risk be subject to criminal law proceedings? If not, which provisions of the Directive are inappropriate for criminal law enforcement and why?
15. What form should the consumer's right of redress take in cases where he or she seeks to recover payments made to the trader that the trader is obliged to return under the Directive? What form should the trader's right of redress take in the event of a failure by consumers to return goods in accordance with their obligations under the Directive?

DIRECTIVES

DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee (¹),

Having regard to the opinion of the Committee of the Regions (²),

Acting in accordance with the ordinary legislative procedure (³),

Whereas:

(1) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (⁴) and 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 (⁵) 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 two Directives by

a single Directive. This Directive should therefore lay down standard rules for the common aspects of distance and off-premises contracts, moving away from the minimum harmonisation approach in the former Directives whilst allowing Member States to maintain or adopt national rules in relation to certain aspects.

(3) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof.

(4) In accordance with Article 2 6(2) TFEU, the internal market is to comprise 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 distance and off-premises contracts 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 respect for 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. 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 for 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, for instance 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-sized enterprises (including individual traders) or agents of direct selling companies

(¹) OJ C 317, 23.12.2009, p. 54.

(²) OJ C 200, 25.8.2009, p. 76.

(³) Position of the European Parliament of 23 June 2011 (not yet published in the Official Journal) and decision of the Council of 10 October 2011.

(⁴) OJ L 372, 31.12.1985, p. 31.

(⁵) OJ L 144, 4.6.1997, p. 19.

- 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 a high level of consumer protection and a better functioning of the business-to-consumer internal market.
- (6) Certain disparities create significant internal market barriers affecting traders and consumers. Those disparities increase compliance costs to traders wishing to engage in the cross-border sale of goods or provision of services. Disproportionate fragmentation also undermines consumer confidence in the internal market.
- (7) Full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should 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 Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union.
- (8) The regulatory aspects to be harmonised should only concern contracts concluded between traders and consumers. Therefore, this Directive should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements.
- (9) This Directive establishes rules on information to be provided for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts. This Directive also regulates the right of withdrawal for distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of business-to-consumer contracts.
- (10) This Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ⁽¹⁾.
- (11) This Directive should be without prejudice to Union provisions relating to specific sectors, such as medicinal products for human use, medical devices, privacy and electronic communications, patients' rights in cross-border healthcare, food labelling and the internal market for electricity and natural gas.
- (12) The information requirements provided for in this Directive should complete the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽²⁾ and 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') ⁽³⁾. Member States should retain the possibility to impose additional information requirements applicable to service providers established in their territory.
- (13) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive. For instance, Member States may decide to extend the application of the rules of this Directive to legal persons or to natural persons who are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or small and medium-sized enterprises. Similarly, Member States may apply the provisions of this Directive to contracts that are not distance contracts within the meaning of this Directive, for example because they are not concluded under an organised distance sales or service-provision scheme. Moreover, Member States may also maintain or introduce national provisions on issues not specifically addressed in this Directive, such as additional rules concerning sales contracts, including in relation to the delivery of goods, or requirements for the provision of information during the existence of a contract.
- (14) This Directive should not affect national law in the area of contract law for contract law aspects that are not regulated by this Directive. Therefore, this Directive should be without prejudice to national law regulating for instance the conclusion or the validity of a contract (for instance in the case of lack of consent). Similarly, this Directive should not affect national law in relation to the general contractual legal remedies, the rules on public economic order, for instance rules on excessive or extortionate prices, and the rules on unethical legal transactions.

⁽¹⁾ OJ L 177, 4.7.2008, p. 6.

⁽²⁾ OJ L 376, 27.12.2006, p. 36.

⁽³⁾ OJ L 178, 17.7.2000, p. 1.

- (15) This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States may maintain or introduce in their national law language requirements regarding contractual information and contractual terms.
- (16) This Directive should not affect national laws on legal representation such as the rules relating to the person who is acting in the name of the trader or on his behalf (such as an agent or a trustee). Member States should remain competent in this area. This Directive should apply to all traders, whether public or private.
- (17) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.
- (18) This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and which specific obligations they should be subject to.
- (19) Digital content means data which are produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, from a tangible medium or through any other means. Contracts for the supply of digital content should fall within the scope of this Directive. If digital content is supplied on a tangible medium, such as a CD or a DVD, it should be considered as goods within the meaning of this Directive. Similarly to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, contracts for digital content which is not supplied on a tangible medium should be classified, for the purpose of this Directive, neither as sales contracts nor as service contracts. For such contracts, the consumer should have a right of withdrawal unless he has consented to the beginning of the performance of the contract during the withdrawal period and has acknowledged that he will consequently lose the right to withdraw from the contract. In addition to the general information requirements, the trader should inform the consumer about the functionality and the relevant interoperability of digital content. The notion of functionality should refer to the ways in which digital content can be used, for instance for the tracking of consumer behaviour; it should also refer to the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding. The notion of relevant interoperability is meant to describe the information regarding the standard hardware and software environment with which the digital content is compatible, for instance the operating system, the necessary version and certain hardware features. The Commission should examine the need for further harmonisation of provisions in respect of digital content and submit, if necessary, a legislative proposal for addressing this matter.
- (20) The definition of distance contract should cover all cases where a contract is concluded between the trader and the consumer under an organised distance sales or service-provision scheme, with the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax) up to and including the time at which the contract is concluded. That definition should also cover situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. By contrast, a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract. Neither should a contract initiated by means of distance communication, but finally concluded at the business premises of the trader be considered a distance contract. Similarly, the concept of distance contract should not include reservations made by a consumer through a means of distance communications to request the provision of a service from a professional, such as in the case of a consumer phoning to request an appointment with a hairdresser. The notion of an organised distance sales or service-provision scheme should include those schemes offered by a third party other than the trader but used by the trader, such as an online platform. It should not, however, cover cases where websites merely offer information on the trader, his goods and/or services and his contact details.
- (21) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader, for example at the consumer's home or workplace. In an off-premises context, the consumer may be under potential psychological pressure or may be confronted with an element of surprise, irrespective of whether or not the consumer has solicited the trader's visit. The definition of an off-premises contract should also include situations where the consumer is personally and individually addressed in an off-premises context but the contract is concluded immediately afterwards on the business premises of the trader or through a means of distance communication. The definition of an off-premises contract should not cover situations in which the

trader first comes to the consumer's home strictly with a view to taking measurements or giving an estimate without any commitment of the consumer and where the contract is then concluded only at a later point in time on the business premises of the trader or via means of distance communication on the basis of the trader's estimate. In those cases, the contract is not to be considered as having been concluded immediately after the trader has addressed the consumer if the consumer has had time to reflect upon the estimate of the trader before concluding the contract. Purchases made during an excursion organised by the trader during which the products acquired are promoted and offered for sale should be considered as off-premises contracts.

- (22) Business premises should include premises in whatever form (such as shops, stalls or lorries) which serve as a permanent or usual place of business for the trader. Market stalls and fair stands should be treated as business premises if they fulfil this condition. Retail premises where the trader carries out his activity on a seasonal basis, for instance during the tourist season at a ski or beach resort, should be considered as business premises as the trader carries out his activity in those premises on a usual basis. Spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport, which the trader uses on an exceptional basis for his business activities as well as private homes or workplaces should not be regarded as business premises. The business premises of a person acting in the name or on behalf of the trader as defined in this Directive should be considered as business premises within the meaning of this Directive.
- (23) Durable media should enable the consumer to store the information for as long as it is necessary for him to protect his interests stemming from his relationship with the trader. Such media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.
- (24) A public auction implies that traders and consumers attend or are given the possibility to attend the auction in person. The goods or services are offered by the trader to the consumer through a bidding procedure authorised by law in some Member States, to offer goods or services at public sale. The successful bidder is bound to purchase the goods or services. The use of online platforms for auction purposes which are at the disposal of consumers and traders should not be considered as a public auction within the meaning of this Directive.
- (25) Contracts related to district heating should be covered by this Directive, similarly to the contracts for the supply of

water, gas or electricity. District heating refers to the supply of heat, *inter alia*, in the form of steam or hot water, from a central source of production through a transmission and distribution system to multiple buildings, for the purpose of heating.

- (26) Contracts related to the transfer of immovable property or of rights in immovable property or to the creation or acquisition of such immovable property or rights, contracts for the construction of new buildings or the substantial conversion of existing buildings as well as contracts for the rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation. Those contracts include for instance sales of immovable property still to be developed and hire-purchase. The provisions of this Directive are not appropriate to those contracts, which should be therefore excluded from its scope. A substantial conversion is a conversion comparable to the construction of a new building, for example where only the façade of an old building is retained. Service contracts in particular those related to the construction of annexes to buildings (for example a garage or a veranda) and those related to repair and renovation of buildings other than substantial conversion, should be included in the scope of this Directive, as well as contracts related to the services of a real estate agent and those related to the rental of accommodation for non-residential purposes.
- (27) Transport services cover passenger transport and transport of goods. Passenger transport should be excluded from the scope of this Directive as it is already subject to other Union legislation or, in the case of public transport and taxis, to regulation at national level. However, the provisions of this Directive protecting consumers against excessive fees for the use of means of payment or against hidden costs should apply also to passenger transport contracts. In relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by this Directive, with the exception of the right of withdrawal.
- (28) In order to avoid administrative burden being placed on traders, Member States may decide not to apply this Directive where goods or services of a minor value are sold off-premises. The monetary threshold should be established at a sufficiently low level as to exclude only purchases of small significance. Member States should be allowed to define this value in their national legislation provided that it does not exceed EUR 50. Where two or more contracts with related subjects are concluded at the same time by the consumer, the total cost thereof should be taken into account for the purpose of applying this threshold.

- (29) Social services have fundamentally distinct features that are reflected in sector-specific legislation, partially at Union level and partially at national level. Social services include, on the one hand, services for particularly disadvantaged or low income persons as well as services for persons and families in need of assistance in carrying out routine, everyday tasks and, on the other hand, services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase. Social services cover, inter alia, services for children and youth, assistance services for families, single parents and older persons, and services for migrants. Social services cover both short-term and long-term care services, for instance services provided by home care services or provided in assisted living facilities and residential homes or housing ('nursing homes'). Social services include not only those provided by the State at a national, regional or local level by providers mandated by the State or by charities recognised by the State but also those provided by private operators. The provisions of this Directive are not appropriate to social services which should be therefore excluded from its scope.
- (30) Healthcare requires special regulations because of its technical complexity, its importance as a service of general interest as well as its extensive public funding. Healthcare is defined in Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (¹) as 'health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices'. Health professional is defined in that Directive as a doctor of medicine, a nurse responsible for general care, a dental practitioner, a midwife or a pharmacist within the meaning of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (²) or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC, or a person considered to be a health professional according to the legislation of the Member State of treatment. The provisions of this Directive are not appropriate to healthcare which should be therefore excluded from its scope.
- (31) Gambling should be excluded from the scope of this Directive. Gambling activities are those which involve wagering at stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions. Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities.
- (32) The existing Union legislation, inter alia, relating to consumer financial services, package travel and timeshare contains numerous rules on consumer protection. For this reason, this Directive should not apply to contracts in those areas. With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured.
- (33) The trader should be obliged to inform the consumer in advance of any arrangement resulting in the consumer paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumer's credit or debit card.
- (34) The trader should give the consumer clear and comprehensible information before the consumer is bound by a distance or off-premises contract, a contract other than a distance or an off-premises contract, or any corresponding offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.
- (35) The information to be provided by the trader to the consumer should be mandatory and should not be altered. Nevertheless, the contracting parties should be able to expressly agree to change the content of the contract subsequently concluded, for instance the arrangements for delivery.
- (36) 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 on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In such cases 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. As to the requirement to inform the consumer of the cost of returning goods which by their nature cannot normally be returned by post, it will be considered to have been met, for example, if the trader specifies one carrier (for instance the one he assigned for the delivery of the good) and one price concerning the cost of returning the goods. Where the

(¹) OJ L 88, 4.4.2011, p. 45.

(²) OJ L 255, 30.9.2005, p. 22.

cost of returning the goods cannot reasonably be calculated in advance by the trader, for example because the trader does not offer to arrange for the return of the goods himself, the trader should provide a statement that such a cost will be payable, and that this cost may be high, along with a reasonable estimation of the maximum cost, which could be based on the cost of delivery to the consumer.

- (37) Since in the case of distance sales, the consumer is not able to see the goods before concluding the contract, he should have a right of withdrawal. For the same reason, the consumer should be allowed to test and inspect the goods he has bought to the extent necessary to establish the nature, characteristics and the functioning of the goods. Concerning off-premises contracts, the consumer should have the right of withdrawal because of the potential surprise element and/or psychological pressure. Withdrawal from the contract should terminate the obligation of the contracting parties to perform the contract.
- (38) Trading websites should indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.
- (39) It is important to ensure for distance contracts concluded through websites that the consumer is able to fully read and understand the main elements of the contract before placing his order. To that end, provision should be made in this Directive for those elements to be displayed in the close vicinity of the confirmation requested for placing the order. It is also important to ensure that, in such situations, the consumer is able to determine the moment at which he assumes the obligation to pay the trader. Therefore, the consumer's attention should specifically be drawn, through an unambiguous formulation, to the fact that placing the order entails the obligation to pay the trader.
- (40) 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. In the case of service contracts, the withdrawal period should expire after 14 days from the conclusion of the contract. In the case of sales contracts, the withdrawal period should expire after 14 days from the day on which the consumer or a third party other than the carrier and indicated by the consumer, acquires physical possession of the goods. In addition the consumer should be able to exercise the right to withdraw before acquiring physical possession of the goods. Where multiple goods are ordered by the consumer in one order but are delivered separately, the withdrawal period should expire after 14 days from the day on which the consumer acquires physical possession of the last good. Where goods are delivered in multiple lots or pieces, the withdrawal period should expire after 14 days from the day on which the consumer acquires the physical possession of the last lot or piece.
- (41) In order 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 limits ⁽¹⁾ 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. Where a period expressed in days is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place should not be considered as falling within the period in question.
- (42) The provisions relating to the right of withdrawal should be without prejudice to the Member States' laws and regulations governing the termination or unenforceability of a contract or the possibility for the consumer to fulfil his contractual obligations before the time determined in the contract.
- (43) If the trader has not adequately informed the consumer prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty as regards the length of the withdrawal period, a 12-month limitation period should be introduced.
- (44) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for traders selling cross-border. The introduction of a harmonised model withdrawal form that the consumer may use should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the Union-wide model form relating for example to the font size. However, the consumer should remain free to withdraw in his own words, provided that his statement setting out his decision to withdraw from the contract to the trader is unequivocal. A letter, a telephone call or returning the goods with a clear statement could meet this requirement, but the burden of proof of having withdrawn within the time limits fixed in the Directive should be on the consumer. For this reason, it is in the interest of the consumer to make use of a durable medium when communicating his withdrawal to the trader.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

- (45) 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 for instance by e-mail without delay.
- (46) In the event that the consumer withdraws from the contract, the trader should reimburse all payments received from the consumer, including those covering the expenses borne by the trader to deliver goods to the consumer. The reimbursement should not be made by voucher unless the consumer has used vouchers for the initial transaction or has expressly accepted them. If the consumer expressly chooses a certain type of delivery (for instance 24-hour express delivery), although the trader had offered a common and generally acceptable type of delivery which would have incurred lower delivery costs, the consumer should bear the difference in costs between these two types of delivery.
- (47) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to establish the nature, characteristics and the functioning of the goods. In this case the consumer should not lose the right to withdraw but should be liable for any diminished value of the goods. In order to establish the nature, characteristics and functioning of the goods, the consumer should only handle and inspect them 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. Consequently, the consumer should handle and inspect the goods with due care during the withdrawal period. The obligations of the consumer in the event of withdrawal should not discourage the consumer from exercising his right of withdrawal.
- (48) The consumer should be required to send back the goods not later than 14 days after having informed the trader about his decision to withdraw from the contract. In situations where the trader or the consumer does not fulfil the obligations relating to the exercise of the right of withdrawal, penalties provided for by national legislation in accordance with this Directive should apply as well as contract law provisions.
- (49) Certain exceptions from the right of withdrawal should exist, both for distance and off-premises contracts. A right of withdrawal could be inappropriate for example given the nature of particular goods or services. That is the case for example with wine supplied a long time after the conclusion of a contract of a speculative nature where the value is dependent on fluctuations in the market ('vin en primeur'). The right of withdrawal should neither apply to goods made to the consumer's specifications or which are clearly personalised such as tailor-made curtains, nor to the supply of fuel, for example, which is a good, by nature inseparably mixed with other items after delivery. The granting of a right of withdrawal to the consumer could also be inappropriate in the case of certain services where the conclusion of the contract implies the setting aside of capacity which, if a right of withdrawal were exercised, the trader may find difficult to fill. This would for example be the case where reservations are made at hotels or concerning holiday cottages or cultural or sporting events.
- (50) On the one hand, the consumer should benefit from his right of withdrawal even in case he has asked for the provision of services before the end of the withdrawal period. On the other hand, if the consumer exercises his right of withdrawal, the trader should be assured to be adequately paid for the service he has provided. The calculation of the proportionate amount should be based on the price agreed in the contract unless the consumer demonstrates that that total price is itself disproportionate, in which case the amount to be paid shall be calculated on the basis of the market value of the service provided. The market value should be defined by comparing the price of an equivalent service performed by other traders at the time of the conclusion of the contract. Therefore the consumer should request the performance of services before the end of the withdrawal period by making this request expressly and, in the case of off-premises contracts, on a durable medium. Similarly, the trader should inform the consumer on a durable medium of any obligation to pay the proportionate costs for the services already provided. For contracts having as their object both goods and services, the rules provided for in this Directive on the return of goods should apply to the goods aspects and the compensation regime for services should apply to the services aspects.
- (51) The main difficulties encountered by consumers and one of the main sources of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore it is appropriate to clarify and harmonise the national rules as to when delivery should occur. The place and modalities of delivery and the rules concerning the determination of the conditions for the transfer of the ownership of the goods and the moment at which such transfer takes place, should remain subject to national law and therefore should not be affected by this Directive. The rules on delivery laid down in this Directive should include the possibility for the consumer to allow a third party to acquire on his behalf the physical possession or control of the goods. The consumer should be considered to have control of the goods where he or a third party indicated by the consumer has access to the goods to use them as an owner, or the ability to resell the goods (for example, when he has received the keys or possession of the ownership documents).

- (52) In the context of sales contracts, the delivery of goods can take place in various ways, either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible, but in any event not later than 30 days from the day of the conclusion of the contract. The rules regarding late delivery should also take into account goods to be manufactured or acquired specially for the consumer which cannot be reused by the trader without considerable loss. Therefore, a rule which grants an additional reasonable period of time to the trader in certain circumstances should be provided for in this Directive. When the trader has failed to deliver the goods within the period of time agreed with the consumer, before the consumer can terminate the contract, the consumer should call upon the trader to make the delivery within a reasonable additional period of time and be entitled to terminate the contract if the trader fails to deliver the goods even within that additional period of time. However, this rule should not apply when the trader has refused to deliver the goods in an unequivocal statement. Neither should it apply in certain circumstances where the delivery period is essential such as, for example, in the case of a wedding dress which should be delivered before the wedding. Nor should it apply in circumstances where the consumer informs the trader that delivery on a specified date is essential. For this purpose, the consumer may use the trader's contact details given in accordance with this Directive. In these specific cases, if the trader fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed. This Directive should be without prejudice to national provisions on the way the consumer should notify the trader of his will to terminate the contract.
- (53) In addition to the consumer's right to terminate the contract where the trader has failed to fulfil his obligations to deliver the goods in accordance with this Directive, the consumer may, in accordance with the applicable national law, have recourse to other remedies, such as granting the trader an additional period of time for delivery, enforcing the performance of the contract, withholding payment, and seeking damages.
- (54) In accordance with Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (¹), Member States should be able to prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments. In any event, traders should be prohibited from charging consumers fees that exceed the cost borne by the trader for the use of a certain means of payment.
- (55) Where the goods are dispatched by the trader to the consumer, disputes may arise, in the event of loss or damage, as to the moment at which the transfer of risk takes place. Therefore this Directive should provide that the consumer be protected against any risk of loss of or damage to the goods occurring before he has acquired the physical possession of the goods. The consumer should be protected during a transport arranged or carried out by the trader, even where the consumer has chosen a particular delivery method from a range of options offered by the trader. However, that provision should not apply to contracts where it is up to the consumer to take delivery of the goods himself or to ask a carrier to take delivery. Regarding the moment of the transfer of the risk, a consumer should be considered to have acquired the physical possession of the goods when he has received them.
- (56) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded the right to initiate proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.
- (57) It is necessary that Member States lay down penalties for infringements of this Directive and ensure that they are enforced. The penalties should be effective, proportionate and dissuasive.
- (58) 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 should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (59) The Commission, following consultation with the Member States and stakeholders, should look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
- (60) Since inertia selling, which consists of unsolicited supply of goods or provision of 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 ('Unfair Commercial Practices Directive') (²) but no contractual remedy is provided therein, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the obligation to provide any consideration for such unsolicited supply or provision.

- (61) 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) (1) already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Directive 97/ 7/EC are therefore not needed.
- (62) It is appropriate for the Commission to review this Directive if some barriers to the internal market are identified. In its review, the Commission should pay particular attention to the possibilities granted to Member States to maintain or introduce specific national provisions including in certain areas of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (2) and 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 (3). That review could lead to a Commission proposal to amend this Directive; that proposal may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the Union *acquis* in order to achieve a high, common level of consumer protection.
- (63) Directives 93/13/EEC and 1999/44/EC should be amended to require Member States to inform the Commission about the adoption of specific national provisions in certain areas.
- (64) Directives 85/577/EEC and 97/7/EC should be repealed.
- (65) Since the objective of this Directive, namely, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 achieve that objective.
- (66) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (67) In accordance with point 34 of the Interinstitutional agreement on better law-making (4), Member States are

encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded 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 person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;
- (3) 'goods' means any tangible movable items, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as goods within the meaning of this Directive where they are put up for sale in a limited volume or a set quantity;
- (4) 'goods made to the consumer's specifications' means non-prefabricated goods made on the basis of an individual choice of or decision by the consumer;
- (5) 'sales contract' means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

(1) OJ L 201, 31.7.2002, p. 37.

(2) OJ L 95, 21.4.1993, p. 29.

(3) OJ L 171, 7.7.1999, p. 12.

(4) OJ C 321, 31.12.2003, p. 1.

(1) OJ L 319, 5.12.2007, p. 1.

(2) OJ L 149, 11.6.2005, p. 22.

- (6) ‘service contract’ means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- (7) ‘distance contract’ means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
- (8) ‘off-premises contract’ means any contract between the trader and the consumer:
- (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
 - (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a);
 - (c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or
 - (d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;
- (9) ‘business premises’ means:
- (a) any immovable retail premises where the trader carries out his activity on a permanent basis; or
 - (b) any movable retail premises where the trader carries out his activity on a usual 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) ‘digital content’ means data which are produced and supplied in digital form;
- (12) ‘financial service’ means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (13) ‘public auction’ means a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;
- (14) ‘commercial guarantee’ means any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;
- (15) ‘ancillary contract’ means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by 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 any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.
2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.
3. This Directive shall not apply to contracts:
 - (a) for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care;
 - (b) for healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU, whether or not they are provided via healthcare facilities;
 - (c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;

- (d) for financial services;
- (e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- (f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- (g) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (¹);
- (h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (²);
- (i) which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- (j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- (k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22;
- (l) concluded by means of automatic vending machines or automated commercial premises;
- (m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

4. Member States may decide not to apply this Directive or not to maintain or introduce corresponding national provisions to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. Member States may define a lower value in their national legislation.

5. This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.

6. This Directive shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided for in this Directive.

Article 4

Level of harmonisation

Member States shall 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, unless otherwise provided for in this Directive.

CHAPTER II

CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS

Article 5

Information requirements for contracts other than distance or off-premises contracts

1. Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;
- (c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;

(¹) OJ L 158, 23.6.1990, p. 59.

(²) OJ L 33, 3.2.2009, p. 10.

- (e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
- (f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (g) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (h) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.
2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.
3. Member States shall not be required to apply paragraph 1 to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.
4. Member States may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies.
- (d) if different from the address provided in accordance with point (c), 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;
- (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
- (f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- (g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- (h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);
- (i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- (j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);
- k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;

CHAPTER III

**CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL
FOR DISTANCE AND OFF-PREMISES CONTRACTS***Article 6***Information requirements for distance and off-premises contracts**

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name;
- (c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;

- (l) a reminder of the existence of a legal guarantee of conformity for goods;
- (m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;
- (n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable;
- (o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (p) where applicable, the minimum duration of the consumer's obligations under the contract;
- (q) where applicable, 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;
- (r) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
- (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.

3. In the case of a public auction, the information referred to in points (b), (c) and (d) of paragraph 1 may be replaced by the equivalent details for the auctioneer.

4. The information referred to in points (h), (i) and (j) of paragraph 1 may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 if he has supplied these instructions to the consumer, correctly filled in.

5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.

6. If the trader has not complied with the information requirements on additional charges or other costs as referred to in point (e) of paragraph 1, or on the costs of returning the goods as referred to in point (i) of paragraph 1, the consumer shall not bear those charges or costs.

7. Member States may maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer.

8. The information requirements laid down in this Directive are in addition to information requirements contained in Directive 2006/123/EC and Directive 2000/31/EC and do not prevent Member States from imposing additional information requirements in accordance with those Directives.

Without prejudice to the first subparagraph, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail.

9. As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader.

Article 7

Formal requirements for off-premises contracts

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.

2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.

3. Where a consumer wants the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer makes such an express request on a durable medium.

4. With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed EUR 200:

- (a) the trader shall provide the consumer with the information referred to in points (b) and (c) of Article 6(1) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (h) and (k) of Article 6(1), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;
- (b) the confirmation of the contract provided in accordance with paragraph 2 of this Article shall contain the information provided for in Article 6(1).

Member States may decide not to apply this paragraph.

5. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

Article 8

Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

2. If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1).

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order.

3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

5. Without prejudice to paragraph 4, if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

6. Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

- (a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and
- (b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

8. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer make an express request.

9. This Article shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in Articles 9 and 11 of Directive 2000/31/EC.

10. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

Article 9

Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.

2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:

- (a) in the case of service contracts, the day of the conclusion of the contract;
- (b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
 - (i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
 - (ii) in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
 - (iii) in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;
- (c) in the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.

3. The Member States shall not prohibit the contracting parties from performing their contractual obligations during

withdrawal period. Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract.

Article 10

Omission of information on the right of withdrawal

1. If the trader has not provided the consumer with the information on the right of withdrawal as required by point (h) of Article 6(1), the withdrawal period shall expire 12 months from the end of the initial withdrawal period, as determined in accordance with Article 9(2).

2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days after the day upon which the consumer receives that information.

Article 11

Exercise of the right of withdrawal

1. Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract. For this purpose, the consumer may either:

- (a) use the model withdrawal form as set out in Annex I(B); or
- (b) make any other unequivocal statement setting out his decision to withdraw from the contract.

Member States shall not provide for any formal requirements applicable to the model withdrawal form other than those set out in Annex I(B).

2. The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in Article 9(2) and Article 10 if the communication concerning the exercise of the right of withdrawal is sent by the consumer before that period has expired.

3. 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 either the model withdrawal form set out in Annex I(B) or any other unequivocal statement on the trader's website. In those cases the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

4. The burden of proof of exercising the right of withdrawal in accordance with this Article shall be on the consumer.

*Article 12***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 the distance or off-premises contract, in cases where an offer was made by the consumer.

*Article 13***Obligations of the trader in the event of withdrawal**

1. The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract in accordance with Article 11.

The trader shall carry out the reimbursement referred to in the first subparagraph using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

2. Notwithstanding paragraph 1, the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.

3. Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

*Article 14***Obligations of the consumer in the event of withdrawal**

1. Unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader in accordance with Article 11. The deadline shall be met if the consumer sends back the goods before the period of 14 days has expired.

The consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.

In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, the trader shall at his own expense collect the goods if, by their nature, those goods cannot normally be returned by post.

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall in any event not be liable for diminished value of the goods where the trader has failed to provide notice of the right of withdrawal in accordance with point (h) of Article 6(1).

3. Where a consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall pay to the trader an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader shall be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.

4. The consumer shall bear no cost for:

(a) the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, in full or in part, during the withdrawal period, where:

- (i) the trader has failed to provide information in accordance with points (h) or (j) of Article 6(1); or
- (ii) the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 7(3) and Article 8(8); or

(b) the supply, in full or in part, of digital content which is not supplied on a tangible medium where:

- (i) the consumer has not given his prior express consent to the beginning of the performance before the end of the 14-day period referred to in Article 9;
- (ii) the consumer has not acknowledged that he loses his right of withdrawal when giving his consent; or
- (iii) the trader has failed to provide confirmation in accordance with Article 7(2) or Article 8(7).

5. Except as provided for in Article 13(2) and in this Article, the consumer shall not incur any liability as a consequence of the exercise of the right of withdrawal.

Article 15

Effects of the exercise of the right of withdrawal on ancillary contracts

1. Without prejudice to Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (¹), if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated, without any costs for the consumer, except as provided for in Article 13(2) and in Article 14 of this Directive.

2. The Member States shall lay down detailed rules on the termination of such contracts.

Article 16

Exceptions from the right of withdrawal

Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following:

- (a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;
- (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 and which may occur within the withdrawal period;
- (c) the supply of goods made to the consumer's specifications or clearly personalised;
- (d) the supply of goods which are liable to deteriorate or expire rapidly;
- (e) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
- (f) the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;

(g) the supply of alcoholic beverages, 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 after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;

(h) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

(i) the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;

(j) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;

(k) contracts concluded at a public auction;

(l) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;

(m) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.

CHAPTER IV

OTHER CONSUMER RIGHTS

Article 17

Scope

1. Articles 18 and 20 shall apply to sales contracts. Those Articles shall not apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or the supply of digital content which is not supplied on a tangible medium.

2. Articles 19, 21 and 22 shall apply to sales and service contracts and to contracts for the supply of water, gas, electricity, district heating or digital content.

(¹) OJ L 133, 22.5.2008, p. 66.

*Article 18***Delivery**

1. Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract.

2. Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer shall call upon him to make the delivery within an additional period of time appropriate to the circumstances. If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to terminate the contract.

The first subparagraph shall not be applicable to sales contracts where the trader has refused to deliver the goods or where delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date is essential. In those cases, if the trader fails to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer shall be entitled to terminate the contract immediately.

3. Upon termination of the contract, the trader shall, without undue delay, reimburse all sums paid under the contract.

4. In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided for by national law.

*Article 19***Fees for the use of means of payment**

Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

*Article 20***Passing of risk**

In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

*Article 21***Communication by telephone**

Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.

*Article 22***Additional payments**

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon 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.

CHAPTER V

GENERAL PROVISIONS

*Article 23***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 transposing 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 24***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 13 December 2013 and shall notify it without delay of any subsequent amendment affecting them.

Article 25

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 the national measures transposing this Directive.

Any contractual terms which directly or indirectly waive or restrict the rights resulting from this Directive shall not be binding on the consumer.

Article 26

Information

Member States shall take appropriate measures to inform consumers and traders of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners as defined in point (g) of Article 2 of Directive 2005/29/EC, to inform consumers of their codes of conduct.

Article 27

Inertia selling

The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services, prohibited by Article 5(5) and point 29 of Annex I to Directive 2005/29/EC. In such cases, the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.

Article 28

Transposition

1. Member States shall adopt and publish, by 13 December 2013, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of these measures in the form of documents. The Commission shall make use of these documents for the purposes of the report referred to in Article 30.

They shall apply those measures from 13 June 2014.

When Member States adopt those measures, 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. The provisions of this Directive shall apply to contracts concluded after 13 June 2014.

Article 29

Reporting requirements

1. Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 6(7), Article 6(8), Article 7(4), Article 8(6) and Article 9(3), it shall inform the Commission thereof by 13 December 2013, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.

Article 30

Reporting by the Commission and review

By 13 December 2016, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall include in particular an evaluation of the provisions of this Directive regarding digital content including the right of withdrawal. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of consumer rights.

CHAPTER VI

FINAL PROVISIONS

Article 31

Repeals

Directive 85/577/EEC and Directive 9 7/7/EC, as amended by Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (¹) and by Directives 2005/29/EC and 2007/64/EC, are repealed as of 13 June 2014.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

(¹) OJ L 271, 9.10.2002, p. 16.

*Article 32***Amendment to Directive 93/13/EEC**

In Directive 93/13/EEC, the following Article is inserted:

Article 8a

1. Where a Member State adopts provisions in accordance with Article 8, it shall inform the Commission thereof, as well as of any subsequent changes, in particular where those provisions:

- extend the unfairness assessment to individually negotiated contractual terms or to the adequacy of the price or remuneration; or,
- contain lists of contractual terms which shall be considered as unfair,

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.'

*Article 33***Amendment to Directive 1999/44/EC**

In Directive 1999/44/EC, the following Article is inserted:

*Article 8a***Reporting requirements**

1. Where, in accordance with Article 8(2), a Member State adopts more stringent consumer protection provisions than

those provided for in Article 5(1) to (3) and in Article 7(1), it shall inform the Commission thereof, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information.'

*Article 34***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 35***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 25 October 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. DOWGIELEWICZ

ANNEX I

Information concerning the exercise of the right of withdrawal

A. Model instructions on withdrawal

Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day ¹.

To exercise the right of withdrawal, you must inform us (²) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory. ³

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. ⁴

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Instructions for completion:

¹. Insert one of the following texts between inverted commas:

- (a) in the case of a service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium: 'of the conclusion of the contract.';
- (b) in the case of a sales contract: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.';
- (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.';
- (d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.';
- (e) in the case of a contract for regular delivery of goods during a defined period of time: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.'.

². Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

³. If you give the option to the consumer to electronically fill in and submit information about his withdrawal from the contract on your website, insert the following: 'You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay.'.

⁴. In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: 'We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.'.

5. If the consumer has received goods in connection with the contract:

(a) insert:

- ‘We will collect the goods.’; or,
- ‘You shall send back the goods or hand them over to us or ... [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.’

(b) insert:

- ‘We will bear the cost of returning the goods.’,
- ‘You will have to bear the direct cost of returning the goods.’,
- If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: ‘You will have to bear the direct cost of returning the goods, ... EUR [insert the amount].’; or if the cost of returning the goods cannot reasonably be calculated in advance: ‘You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [insert the amount].’; or
- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer’s home at the time of the conclusion of the contract: ‘We will collect the goods at our own expense.’; and,

(c) insert ‘You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.’

6. In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, insert the following: ‘If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract.’

B. Model withdrawal form

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

- To [here the trader’s name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the 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 on paper),
- Date

(*) Delete as appropriate.

ANNEX II

Correlation table

Directive 85/577/EEC	Directive 97/7/EC	This Directive
Article 1		Article 3 read in conjunction with Article 2, points 8 and 9, and Article 16, point (h)
	Article 1	Article 1 read in conjunction with Article 2, point 7
Article 2		Article 2, points 1 and 2
	Article 2, point 1	Article 2, point 7
	Article 2, point 2	Article 2, point 1
	Article 2, point 3	Article 2, point 2
	Article 2, point 4, first sentence	Article 2, point 7
	Article 2, point 4, second sentence	—
	Article 2, point 5	—
Article 3(1)		Article 3(4)
Article 3(2), point (a)		Article 3(3), points (e) and (f)
Article 3(2), point (b)		Article 3(3), point (j)
Article 3(2), point (c)		—
Article 3(2), point (d)		Article 3(3), point (d)
Article 3(2), point (e)		Article 3(3), point (d)
Article 3(3)		—
	Article 3(1), first indent	Article 3(3), point (d)
	Article 3(1), second indent	Article 3(3), point (l)
	Article 3(1), third indent	Article 3(3), point (m)
	Article 3(1), fourth indent	Article 3(3), points (e) and (f)
	Article 3(1), fifth indent	Article 6(3) and Article 16, point (k) read in conjunction with Article 2, h
	Article 3(2), first indent	Article 3(3), point (j)
	Article 3(2), second indent	Article 3(3), point (f) (for rental of accommodation for residential purposes), point (g) (for package travel), point (h) (for timeshare), point (k) (for passenger transport with some exceptions) and Article 16, point (l) (exemption from the right of withdrawal)
Article 4, first sentence		Article 6(1), points (b), (c) and (h), and Article 7(1) and (2)
Article 4, second sentence		Article 6(1), point a and Article 7(1)
Article 4, third sentence		Article 6(1)
Article 4, fourth sentence		Article 10
	Article 4(1), point (a)	Article 6(1), points (b) and (c)
	Article 4(1), point (b)	Article 6(1), point (a)

Directive 85/577/EEC	Directive 97/7/EC	This Directive
	Article 4(1), point (c)	Article 6(1), point (e)
	Article 4(1), point (d)	Article 6(1), point (e)
	Article 4(1), point (e)	Article 6(1), point (g)
	Article 4(1), point (f)	Article 6(1), point (h)
	Article 4(1), point (g)	Article 6(1), point (f)
	Article 4(1), point (h)	—
	Article 4(1), point (i)	Article 6(1), points (o) and (p)
	Article 4(2)	Article 6(1) read in conjunction with Article 8(1), (2) and (4)
	Article 4(3)	Article 8(5)
	Article 5(1)	Article 8(7)
	Article 5(2)	Article 3(3), point m
	Article 6(1)	Article 9(1) and (2), Article 10, Article 13(2), Article 14
	Article 6(2)	Article 13 and Article 14(1), second and third subparagraphs
	Article 6(3), first indent	Article 16, point (a)
	Article 6(3), second indent	Article 16, point (b)
	Article 6(3), third indent	Article 16, point (c) and (d)
	Article 6(3), fourth indent	Article 16, point (i)
	Article 6(3), fifth indent	Article 16, point (j)
	Article 6(3), sixth indent	Article 3(3), point (c)
	Article 6(4)	Article 15
	Article 7(1)	Article 18(1) (for sales contracts)
	Article 7(2)	Article 18(2), (3) and (4)
	Article 7(3)	—
	Article 8	—
	Article 9	Article 27
	Article 10	— (but see Article 13 of Directive 2002/58/EC)
	Article 11(1)	Article 23(1)
	Article 11(2)	Article 23(2)
	Article 11(3), point (a)	Article 6(9) for the burden of proof concerning pre-contractual information; for the rest: —
	Article 11(3), point (b)	Article 24(1)
	Article 11(4)	—
	Article 12(1)	Article 25
	Article 12(2)	—
	Article 13	Article 3(2)
	Article 14	Article 4

Directive 85/577/EEC	Directive 97/7/EC	This Directive
	Article 15(1)	Article 28(1)
	Article 15(2)	Article 28(1)
	Article 15(3)	Article 28(1)
	Article 15(4)	Article 30
	Article 16	Article 26
	Article 17	—
	Article 18	Article 34
	Article 19	Article 35
Article 5(1)		Articles 9 and 11
Article 5(2)		Article 12
Article 6		Article 25
Article 7		Articles 13, 14 and 15
Article 8		Article 4

Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (1)	To be construed as a reference to
Paragraphs 2 and 11	This Directive

(¹) OJ L 364, 9.12.2004, p. 1.