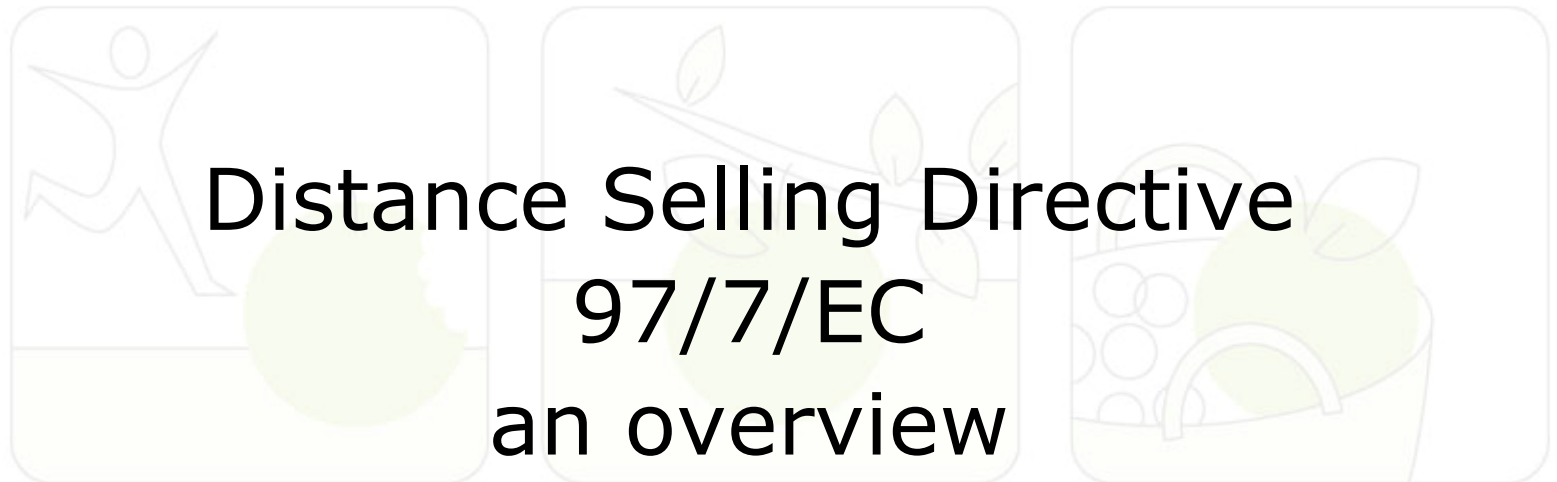


Health & Consumer Protection Directorate General



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B2 – Unfair commercial practices and other consumer protection legislation

Purpose, definitions and scope

- Increase consumer confidence
- Covers both goods and services
- Only B2C transactions
- No contracting out or waiver
- No face-to-face contact

- **'distance contract'** means 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.
- **'means of distance communication'** means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties (indicative list at Annex I)

General Exemptions

- financial services
- sale of and construction of land or buildings and immovable property rights in general. But it does cover rental agreements
- vending machines
- public payphones
- auctions

Specific Exemptions

In addition, the core of the directive's rights do not apply to the provision of the following services on a specific date

- transport
- accommodation
- catering
- leisure services
- the regular roundsmen exemption

Key rights and obligations

Prior information

Includes:

- the business name of the supplier
- his address where payment in advance is required
- a description of the goods or services
- the price of the goods or services including all taxes and how long that price is valid for
- when/where delivery will take place and delivery costs
- how and when to pay
- the existence of a right of withdrawal in most cases

Key rights and obligations

And should be given in

- good time prior to making the contract
- clear and comprehensible manner
- appropriate fashion

And indicate that

- purpose of the contract is commercial

Key rights and obligations

Written confirmation of information

- in a durable and accessible medium e.g. writing
- before or at the time the good or service is delivered
- a postal address to which complaints can be sent
- whether and how the contract can be cancelled
- the conditions for terminating the contract if it is of unlimited duration or longer than one year
- information on after-sales services and guarantees

Key rights and obligations

Cooling off period

1. Exemptions

Unless there is an agreement otherwise the right of withdrawal does not apply

- services that begin with the consumer's agreement before the end of the cooling off period
- the price of the goods or services is dependent upon financial market fluctuations that are beyond the supplier's control
- the goods that cannot be returned
- unsealed audio/video tapes or computer software
- newspapers or magazines
- gaming and lottery services.

Key rights and obligations

2. Main characteristics

- at least 7 working days
- no need to give a reason
- full refund within 30 days
- consumer bears the cost of returning the goods
- services that begin with the consumer's agreement before

3. When does the 7 working day period run from?

- if written confirmation has been given: from the day of receipt of the goods or in the case of services on the day the contract for distance selling was concluded
- if no written confirmation: from the day it is received, as long as it is received within 3 months of the receipt of goods or the conclusion of a contract for services.

Key rights and obligations

Performance by the supplier

- within 30 days of the day after the order was placed unless they have agreed otherwise with the consumer
- If the supplier cannot comply, he must inform the consumer who is then entitled to a refund within 30 days
- Provision of equivalent goods to the consumer. The supplier must bear the cost of returning the goods if the consumer decides to exercise his right of withdrawal in this case

Credit agreements and payment by card

- If a consumer makes use of right of withdrawal, then any credit agreement which he entered into with the supplier or which was arranged by the supplier will also be cancelled.
- The directive does also make specific provisions in case of fraudulent use of a payment card in relation to a distance contract. It clarifies that the payment should be cancelled and the consumer refunded.

Prohibitions and restrictions on use of certain means of distance communication

1. Prohibition of Inertia Selling

Inertia selling i.e. a practice in which goods are sent to a consumer without having been ordered.

2. Rules specific to certain means of communication

- fax and automatic calling machine
- telephone

Other relevant EC legislation and case law

- E-commerce directive 2000/31/EC
- Distance selling of financial services directive 2002/65/EC
- Privacy and electronic communications directive 2002/58/EC
- Judgement of the Court of Justice in Case C-336/03 – The "EasyCar" case

USEFUL LINKS

Commission

www.ec.europa.eu

DG Health and Consumer Protection

www.ec.europa.eu/comm/consumers/index_en.htm

Distance Selling

www.ec.europa.eu/comm/consumers/cons_int/safe_shop/dist_sell/index_en.htm