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► **B**      **DIRECTIVE 2002/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 September 2002**  
**concerning the distance marketing of consumer financial services and amending Council Directive**  
**90/619/EEC and Directives 97/7/EC and 98/27/EC**  
(OJ L 271, 9.10.2002, p. 16)

Amended by:

		Official Journal		
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► <b><u>M1</u></b>	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005	L 149	22	11.6.2005
► <b><u>M2</u></b>	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007	L 319	1	5.12.2007
► <b><u>M3</u></b>	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015	L 337	35	23.12.2015



**DIRECTIVE 2002/65/EC OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**of 23 September 2002**

**concerning the distance marketing of consumer financial services  
and amending Council Directive 90/619/EEC and Directives  
97/7/EC and 98/27/EC**

*Article 1*

**Object and scope**

1. The object of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services.

2. In the case of contracts for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions of this Directive shall apply only to the initial agreement.

In case there is no initial service agreement but the successive operations or the separate operations of the same nature performed over time are performed between the same contractual parties, Articles 3 and 4 apply only when the first operation is performed. Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in a new series of operations and, accordingly, Articles 3 and 4 shall apply.

*Article 2*

**Definitions**

For the purposes of this Directive:

- (a) ‘distance contract’ means any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
- (b) ‘financial service’ means any service of a banking, credit, insurance, personal pension, investment or payment nature;
- (c) ‘supplier’ means any natural or legal person, public or private, who, acting in his commercial or professional capacity, is the contractual provider of services subject to distance contracts;
- (d) ‘consumer’ means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (e) ‘means of distance communication’ refers to any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the distance marketing of a service between those parties;

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- (f) ‘durable medium’ means any instrument which enables the consumer 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;
- (g) ‘operator or supplier of a means of distance communication’ means any public or private, natural or legal person whose trade, business or profession involves making one or more means of distance communication available to suppliers.

*Article 3***Information to the consumer prior to the conclusion of the distance contract**

1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:

(1) the supplier

- (a) the identity and the main business of the supplier, the geographical address at which the supplier is established and any other geographical address relevant for the customer's relations with the supplier;
- (b) the identity of the representative of the supplier established in the consumer's Member State of residence and the geographical address relevant for the customer's relations with the representative, if such a representative exists;
- (c) when the consumer's dealings are with any professional other than the supplier, the identity of this professional, the capacity in which he is acting vis-à-vis the consumer, and the geographical address relevant for the customer's relations with this professional;
- (d) where the supplier is registered in a trade or similar public register, the trade register in which the supplier is entered and his registration number or an equivalent means of identification in that register;
- (e) where the supplier's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;

(2) the financial service

- (a) a description of the main characteristics of the financial service;
- (b) the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

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- (c) where relevant notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the supplier's control and that historical performances are no indicators for future performances;
  - (d) notice of the possibility that other taxes and/or costs may exist that are not paid via the supplier or imposed by him;
  - (e) any limitations of the period for which the information provided is valid;
  - (f) the arrangements for payment and for performance;
  - (g) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged;
- (3) the distance contract
- (a) the existence or absence of a right of withdrawal in accordance with Article 6 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 7(1), as well as the consequences of non-exercise of that right;
  - (b) the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;
  - (c) information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed by the contract in such cases;
  - (d) practical instructions for exercising the right of withdrawal indicating, *inter alia*, the address to which the notification of a withdrawal should be sent;
  - (e) the Member State or States whose laws are taken by the supplier as a basis for the establishment of relations with the consumer prior to the conclusion of the distance contract;
  - (f) any contractual clause on law applicable to the distance contract and/or on competent court;
  - (g) in which language, or languages, the contractual terms and conditions, and the prior information referred to in this Article are supplied, and furthermore in which language, or languages, the supplier, with the agreement of the consumer, undertakes to communicate during the duration of this distance contract;

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## (4) redress

- (a) whether or not there is an out-of-court complaint and redress mechanism for the consumer that is party to the distance contract and, if so, the methods for having access to it;
- (b) the existence of guarantee funds or other compensation arrangements, not covered by Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes <sup>(1)</sup> and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes <sup>(2)</sup>.

2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

## 3. In the case of voice telephony communications

- (a) the identity of the supplier and the commercial purpose of the call initiated by the supplier shall be made explicitly clear at the beginning of any conversation with the consumer;
- (b) subject to the explicit consent of the consumer only the following information needs to be given:
  - the identity of the person in contact with the consumer and his link with the supplier,
  - a description of the main characteristics of the financial service,
  - the total price to be paid by the consumer to the supplier for the financial service including all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it,
  - notice of the possibility that other taxes and/or costs may exist that are not paid via the supplier or imposed by him,
  - the existence or absence of a right of withdrawal in accordance with Article 6 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 7(1).

The supplier shall inform the consumer that other information is available on request and of what nature this information is. In any case the supplier shall provide the full information when he fulfils his obligations under Article 5.

<sup>(1)</sup> OJ L 135, 31.5.1994, p. 5.

<sup>(2)</sup> OJ L 84, 26.3.1997, p. 22.

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4. Information on contractual obligations, to be communicated to the consumer during the pre-contractual phase, shall be in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if the latter were concluded.

*Article 4***Additional information requirements**

1. Where there are provisions in the Community legislation governing financial services which contain prior information requirements additional to those listed in Article 3(1), these requirements shall continue to apply.

2. Pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Community law.

3. Member States shall communicate to the Commission national provisions on prior information requirements under paragraphs 1 and 2 of this Article when these requirements are additional to those listed in Article 3(1). The Commission shall take account of the communicated national provisions when drawing up the report referred to in Article 20(2).

4. The Commission shall, with a view to creating a high level of transparency by all appropriate means, ensure that information, on the national provisions communicated to it, is made available to consumers and suppliers.

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5. Where Directive (EU) 2015/2366 of the European Parliament and of the Council <sup>(1)</sup> is also applicable, the information provisions under Article 3(1) of this Directive, with the exception of points (2)(c) to (g), (3)(a), (d) and (e), and (4)(b), shall be replaced with Articles 44, 45, 51 and 52 of Directive (EU) 2015/2366.

**▼B***Article 5***Communication of the contractual terms and conditions and of the prior information**

1. The supplier shall communicate to the consumer all the contractual terms and conditions and the information referred to in Article 3(1) and Article 4 on paper or on another durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

<sup>(1)</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC, 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

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2. The supplier shall fulfil his obligation under paragraph 1 immediately after the conclusion of the contract, if the contract has been concluded at the consumer's request using a means of distance communication which does not enable providing the contractual terms and conditions and the information in conformity with paragraph 1.

3. At any time during the contractual relationship the consumer is entitled, at his request, to receive the contractual terms and conditions on paper. In addition, the consumer is entitled to change the means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided.

*Article 6***Right of withdrawal**

1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason. However, this period shall be extended to 30 calendar days in distance contracts relating to life insurance covered by Directive 90/619/EEC and personal pension operations.

The period for withdrawal shall begin:

- either from the day of the conclusion of the distance contract, except in respect of the said life assurance, where the time limit will begin from the time when the consumer is informed that the distance contract has been concluded, or
- from the day on which the consumer receives the contractual terms and conditions and the information in accordance with Article 5(1) or (2), if that is later than the date referred to in the first indent.

Member States, in addition to the right of withdrawal, may provide that the enforceability of contracts relating to investment services is suspended for the same period provided for in this paragraph.

2. The right of withdrawal shall not apply to:

- (a) financial services whose price depends on fluctuations in the financial market outside the suppliers control, which may occur during the withdrawal period, such as services related to:
  - foreign exchange,
  - money market instruments,
  - transferable securities,
  - units in collective investment undertakings,
  - financial-futures contracts, including equivalent cash-settled instruments,

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- forward interest-rate agreements (FRAs),
  - interest-rate, currency and equity swaps,
  - options to acquire or dispose of any instruments referred to in this point including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
- (b) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;
- (c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

3. Member States may provide that the right of withdrawal shall not apply to:

- (a) any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building, or
- (b) any credit secured either by mortgage on immovable property or by a right related to immovable property, or
- (c) declarations by consumers using the services of an official, provided that the official confirms that the consumer is guaranteed the rights under Article 5(1).

This paragraph shall be without prejudice to the right to a reflection time to the benefit of the consumers that are resident in those Member States where it exists, at the time of the adoption of this Directive.

4. Member States making use of the possibility set out in paragraph 3 shall communicate it to the Commission.

5. The Commission shall make available the information communicated by Member States to the European Parliament and the Council and shall ensure that it is also available to consumers and suppliers who request it.

6. If the consumer exercises his right of withdrawal he shall, before the expiry of the relevant deadline, notify this following the practical instructions given to him in accordance with Article 3(1)(3)(d) by means which can be proved in accordance with national law. The deadline shall be deemed to have been observed if the notification, if it is on paper or on another durable medium available and accessible to the recipient, is dispatched before the deadline expires.



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7. This Article does not apply to credit agreements cancelled under the conditions of Article 6(4) of Directive 97/7/EC or Article 7 of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis <sup>(1)</sup>.

If to a distance contract of a given financial service another distance contract has been attached concerning services provided by the supplier or by a third party on the basis of an agreement between the third party and the supplier, this additional distance contract shall be cancelled, without any penalty, if the consumer exercises his right of withdrawal as provided for in Article 6(1).

8. The provisions of this Article are without prejudice to the Member States' laws and regulations governing the cancellation or termination or non-enforceability of a distance contract or the right of a consumer to fulfil his contractual obligations before the time fixed in the distance contract. This applies irrespective of the conditions for and the legal effects of the winding-up of the contract.

*Article 7***Payment of the service provided before withdrawal**

1. When the consumer exercises his right of withdrawal under Article 6(1) he may only be required to pay, without any undue delay, for the service actually provided by the supplier in accordance with the contract. The performance of the contract may only begin after the consumer has given his approval. The amount payable shall not:

— exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract,

— in any case be such that it could be construed as a penalty.

2. Member States may provide that the consumer cannot be required to pay any amount when withdrawing from an insurance contract.

3. The supplier may not require the consumer to pay any amount on the basis of paragraph 1 unless he can prove that the consumer was duly informed about the amount payable, in conformity with Article 3(1)(3)(a). However, in no case may he require such payment if he has commenced the performance of the contract before the expiry of the withdrawal period provided for in Article 6(1) without the consumer's prior request.

<sup>(1)</sup> OJ L 280, 29.10.1994, p. 83.

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4. The supplier shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums he has received from him in accordance with the distance contract, except for the amount referred to in paragraph 1. This period shall begin from the day on which the supplier receives the notification of withdrawal.

5. The consumer shall return to the supplier any sums and/or property he has received from the supplier without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer dispatches the notification of withdrawal.

**▼ M2****▼ M1***Article 9*

Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market<sup>(1)</sup> and without prejudice to the provisions of Member States' legislation on the tacit renewal of distance contracts, when such rules permit tacit renewal, Member States shall take measures to exempt the consumer from any obligation in the event of unsolicited supplies, the absence of a reply not constituting consent.

**▼ B***Article 10***Unsolicited communications**

1. The use by a supplier of the following distance communication techniques shall require the consumer's prior consent:

- (a) automated calling systems without human intervention (automatic calling machines);
- (b) fax machines.

2. Member States shall ensure that means of distance communication other than those referred to in paragraph 1, when they allow individual communications:

- (a) shall not be authorised unless the consent of the consumers concerned has been obtained, or
- (b) may only be used if the consumer has not expressed his manifest objection.

3. The measures referred to in paragraphs 1 and 2 shall not entail costs for consumers.

<sup>(1)</sup> OJ L 149, 11.6.2005, p. 22.

**▼B***Article 11***Sanctions**

Member States shall provide for appropriate sanctions in the event of the supplier's failure to comply with national provisions adopted pursuant to this Directive.

They may provide for this purpose in particular that the consumer may cancel the contract at any time, free of charge and without penalty.

These sanctions must be effective, proportional and dissuasive.

*Article 12***Imperative nature of this Directive's provisions**

1. Consumers may not waive the rights conferred on them by this Directive.

2. Member States shall take the measures needed to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-member country as the law applicable to the contract, if this contract has a close link with the territory of one or more Member States.

*Article 13***Judicial and administrative redress**

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers.

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 in accordance with national law before the courts or competent administrative bodies to ensure that the national provisions for the implementation of 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.

3. Member States shall take the measures necessary to ensure that operators and suppliers of means of distance communication put an end to practices that have been declared to be contrary to this Directive, on the basis of a judicial decision, an administrative decision or a decision issued by a supervisory authority notified to them, where those operators or suppliers are in a position to do so.

**▼ B***Article 14***Out-of-court redress**

1. Member States shall promote the setting up or development of adequate and effective out-of-court complaints and redress procedures for the settlement of consumer disputes concerning financial services provided at distance.

2. Member States shall, in particular, encourage the bodies responsible for out-of-court settlement of disputes to cooperate in the resolution of cross-border disputes concerning financial services provided at distance.

*Article 15***Burden of proof**

Without prejudice to Article 7(3), Member States may stipulate that the burden of proof in respect of the supplier's obligations to inform the consumer and the consumer's consent to conclusion of the contract and, where appropriate, its performance, can be placed on the supplier.

Any contractual term or condition providing that the burden of proof of the respect by the supplier of all or part of the obligations incumbent on him pursuant to this Directive should lie with the consumer shall be an unfair term within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>(1)</sup>.

*Article 16***Transitional measures**

Member States may impose national rules which are in conformity with this Directive on suppliers established in a Member State which has not yet transposed this Directive and whose law has no obligations corresponding to those provided for in this Directive.

*Article 17***Directive 90/619/EC**

In Article 15(1) of Directive 90/619/EEC the first subparagraph shall be replaced by the following:

‘1. Each Member State shall prescribe that a policyholder who concludes an individual life-assurance contract shall have a period of 30 calendar days, from the time when he was informed that the contract had been concluded, within which to cancel the contract.’

<sup>(1)</sup> OJ L 95, 21.4.1993, p. 29.



*Article 18*

**Directive 97/7/EC**

Directive 97/7/EC is hereby amended as follows:

1. the first indent of Article 3(1) shall be replaced by the following:

‘— relating to any financial service to which Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (\*) applies,

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(\*) OJ L 271, 9.10.2002, p. 16.’;

2. Annex II shall be deleted.

*Article 19*

**Directive 98/27/EC**

The following point shall be added to the Annex of Directive 98/27/EC:

‘11. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (\*).

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(\*) OJ L 271, 9.10.2002, p. 16.’

*Article 20*

**Review**

1. Following the implementation of this Directive, the Commission shall examine the functioning of the internal market in financial services in respect of the marketing of those services. It should seek to analyse and detail the difficulties that are, or might be faced by both consumers and suppliers, in particular arising from differences between national provisions regarding information and right of withdrawal.

2. Not later than 9 April 2006 the Commission shall report to the European Parliament and the Council on the problems facing both consumers and suppliers seeking to buy and sell financial services, and shall submit, where appropriate, proposals to amend and/or further harmonise the information and right of withdrawal provisions in Community legislation concerning financial services and/or those covered in Article 3.

**▼B***Article 21***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 9 October 2004. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

*Article 22***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 23***Addressees**

This Directive is addressed to the Member States.