

# **DISTANCE MARKETING OF FINANCIAL SERVICES ACT**

*In force from 01.01.2007*

*Prom. SG. 105/22 Dec 2006, amend. SG. 23/27 Mar 2009, amend. SG. 82/16 Oct 2009, amend. SG. 61/25 Jul 2014, amend. SG. 14/20 Feb 2015, amend. SG. 57/28 Jul 2015, **amend. SG. 20/6 Mar 2018***

## **Chapter one. GENERAL PROVISIONS**

Art. 1. This Act provides the requirements to distance marketing of financial services.

Art. 2. The Act aims to ensure consumer protection in the cases of distance marketing of financial services.

Art. 3. (1) The provisions of this Act shall be applied to the contracts for distance marketing of financial services between supplier and consumer.

(2) In the case of contracts for distance marketing of financial services comprising initial agreement for providing financial service, followed by successive operations or series of operations having the same nature, performed over certain time intervals, the provisions of this Act shall apply only to the initial agreement

(3) The provisions of this Act shall also apply to distance contracts, which add new elements to the initial agreement under Para 1 for distance marketing of financial service.

(4) In case the contract does not include initial agreement for distance marketing of financial service, but however the successive or the separate operations of the same nature are performed between the same contractual parties over certain time intervals, the provisions of Art.s 8 and 9 shall apply to the first operation.

(5) In the cases under Para 4 and in case no operation of the same nature has been performed for more than one year, the next operation shall be deemed the first one of a new series of operations and, accordingly, the provisions of Art.s 8 and 9 shall be applicable to it.

Art. 4 (1) The rights, provided for the consumers under this Act, can not be limited. Each settlement, by which the rights of the consumers are preliminary excluded or limited, shall be void.

(2) Any waiver of rights that the consumers are granted under this Act, shall be considered void.

Art. 5. Any contractual clause, stating applicable the legislation of another state that is not a member of the European Union and which excludes the application of the provisions of this Act or of the respective legislation of a Member State of the European Union, shall be null and void.

## **Chapter two. CONTRACT FOR DISTANCE MARKETING OF FINANCIAL SERVICES**

Art. 6. "Contract for distance marketing of financial services" shall be any contract concluded between supplier and consumer as a part of system for distance marketing of financial services, organised by the supplier, in which case from sending the proposal till the conclusion of the contract the parties shall exclusively use means of distance communication – one or more.

Art. 7. (1) Contractual parties under the contract for distance marketing of financial services shall be the consumer and the supplier.

(2) "Consumer" shall be any natural person, who acts as a party to a distance contract for providing financial services outside the frameworks of his/her commercial or professional activity.

(3) "Supplier" shall be any natural or legal person, who in the frameworks of his/her commercial or professional activity concludes distance contract with a consumer for marketing of financial service.

### **Chapter three. PROVIDING INFORMATION TO CONSUMERS**

Art. 8. (1) Prior to being bound by proposal or by a contract for distance marketing of financial services, the consumer shall be provided timely by the supplier with the following information:

1. regarding the supplier:

a) name/trade name, general activity and seat of the supplier, as well as any address, which may be important for performing the relationships between the supplier and the consumer;

b) name/trade name and address of the representative of the supplier, settled in the state, where the consumer resides, if there is such;

c) name and address of any other person, who has established trade relationships with the consumer in connection with the contract under Art. 6, as well as information in what capacity does this person act in the trade relations with the consumer;

d) BULSTAT code or unified identification number of the supplier, provided by the Registry Agency;

e) address of the administrative or supervisory body – in case the activity of the supplier is subject to issuance of a preliminary permission by the respective body;

2. regarding the financial service:

a) description of the general features of the financial service;

b) total price of the financial service, owed by the consumer, including all commissions, fees and expenses, related to the service, as well as all taxes, which are paid via the supplier; in case the accurate price of the service is impossible to be indicated, there shall be indicated the method of calculating the price, in a way that lets the consumer check it;

c) notification of the consumer, if the financial service is connected to instruments, which assume special risks, originating from their specific nature or from the forthcoming operations to be executed, or whose purpose depends on the fluctuations of the financial markets, that the supplier can not influence, and that the results achieved by that moment do not allow performing trustful prognoses;

d) presence of other taxes or/and expenses, which are not paid through the supplier or are not specified by him/her;

e) the period of time, during which the provided information is valid;

f) methods of payment and performance of the service;

g) all additional expenses for the consumer, related to using means of distance communication, in case they are paid by the consumer;

3. regarding the contract for distance marketing of financial services:

a) the presence or absence of right of the consumer to waive the concluded contract pursuant to Art. 12, Para 1, 2 or 3; in case the consumer is entitled to disclaim the concluded contract, the information shall also include the period of time, during which he/she can exercise his/her right, the circumstances for its exercising, including the sum, which the consumer may be obliged to pay according to Art. 13, Para 1, as well as information about the consequences for the consumer if he/she does not exercise his/her right of disclaimer regarding the concluded contract;

b) the minimum term of the contract for distance marketing of financial service in case of contracts for permanent or periodical provision of financial services;

c) the right of the parties to terminate the contract ahead of term or unilaterally according to the clauses of the distance contract for providing financial services, including the forfeit agreed in the contract, which shall be paid;

d) practical directions for exercising the waiver of the concluded contract, in which shall also be indicated the address when the notification should be sent;

e) the Member State or the Member States of the European Union, whose legislation is stated as applicable by the supplier at establishing trade relations with the consumer prior to concluding the contract:

f) the law applicable to the contract for distance marketing of financial services and/or the competent jurisdiction;

g) the language or the languages, in which the terms of the contract shall be provided and the preliminary contract information under this Art.;

h) the language or the languages, agreed with the consumer, which the supplier is obliged to use for communication during the term of the contract;

4. other information about:

a) the presence or absence of out-of-court means for settling consumer arguments pursuant to the contract for distance marketing of financial services and for indemnifying the consumer, as well as regarding the access of the consumer to such means;

b) the existence of a guarantee fund or of other similar means for compensation of the consumers, different from the Guarantee Fund of the Deposits in the Banks or from the Fund for Compensating the Investors in Securities.

(2) (new – SG 23/09, in force from 01.11.2009, amend. - SG 20/18, in force from 06.03.2018) Where the supplier is a supplier of payment services pursuant to the Payment Services and Payment Systems Act, in cases referred to in par. 1 shall apply the provisions of Art. 58, respectively Art. 60 and 61 of the Payment Services and Payment Systems Act, whereas the information under par. 1, item 2, items “c” – “g”, item 3, items “a”, “d” and “e” and item 4, item “b” shall be provided to the user.

(3) (prev. par. 2 – SG 23/09, in force from 01.11.2009) The supplier shall provide the information under Para 1 in a way, that raise no doubt about its commercial purpose. The information shall be provided in comprehensible and transparent way with respect of the means of distance communication observing the requirement of due diligence of the parties to the commercial transactions and of interests protection of the incapacitated persons.

(4) (prev. par. 3 – SG 23/09, in force from 01.11.2009) The information under this Art. shall be provided to the consumer in good time before the consumer is bound by any obligations of the contract. In case the financial service is provided in the territory of the Republic of Bulgaria, the information shall be provided in Bulgarian or also in Bulgarian.

Art. 9. (1) In case of using telephone as means for communication or other means for voice distance communication the supplier shall be obliged in the very beginning of the conversation with the consumer to reveal unambiguously and clearly his/her identity and the commercial nature of the call.

(2) In case the consumer has explicitly agreed, the supplier shall provide the following information:

1. identity of the person, who has made connection with the consumer, and his/her relationships with the supplier;

2. description of the main characteristics of the financial service

3. the total price due by the consumer to the supplier regarding the financial service including all taxes paid via the supplier or, when an exact price cannot be indicated, there shall be indicated the way for calculation of the price enabling the consumer to check it,

4. the existence of other taxes and/or costs, that are not paid via the supplier or are not determined by him/her;

5. the existence or absence of a right of the consumer of withdrawal; where the consumer is entitled to withdraw the concluded contract, its duration and the conditions for exercising it shall be indicated,

including the amount which the consumer may be required to pay.

(3) The supplier shall notify the consumer that additional information is available on his/her request and of what nature this information is.

Art. 10. (1) Prior to be bound by offer or the contract for distance marketing of financial services, the supplier shall notify him/her in time for all the conditions of contract for distance marketing of financial services and to provide for him/her the information under art. 8 and 9 on paper or on another durable medium accessible to the consumer.

(2) The supplier shall fulfil his/her obligation under Para 1 immediately after the conclusion of the contract, if the contract for distance marketing of financial services has been concluded on the consumer's initiative using means of communication which does not enable notification of the consumer of the conditions of contracts.

(3) At any time during the action of the contract the consumer is entitled, at his/her explicit request, to receive the contractual terms and conditions on paper. 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.

(4) The consumer shall not be obliged to carry out any payments to the supplier, including fees, commissions or other costs, which are not included in the conditions of the concluded contract for distance marketing of financial services.

Art. 11. (1) The information about the contractual obligations, that is provided to the consumer prior to the conclusion of the contract, shall compulsorily correspond to the contractual obligations that would raise by virtue of the law applicable to the contract for distance marketing of financial services, on the condition that the contract is concluded.

(2) The information, which the supplier provides to the consumer according to Art. 8 – 10, shall be complete, accurate, comprehensible and not deluding the consumer.

#### **Chapter four.**

#### **RIGHT OF WITHDRAWAL. RIGHT OF CONTRACT TERMINATION**

Art. 12. (1) Consumer shall be entitled to withdraw from the concluded contract, without compensation or forfeit being payable and without giving any reason, within a period of 14 daysq strting from:

1. the date of concluding the contract;

2. the day, when the consumer receives the conditions of the contract and the information under Art. 10, Para 1 and 2, when this happens after conclusion of the contract.

(2) The consumer shall exercise his/her right of withdrawal of the concluded distance Contract for Additional Voluntary Pension Insurance with Personal Installments or for Life Insurance without owing indemnity and/or penalty and without giving any reason, in 30 days term, considered from:

1. the date of concluding the contract for additional voluntary pension insurance with personal installments or as soon as the insured is notified by the insurer about the conclusion of the insurance contract, or from

2. the day when the consumer obtains the conditions of the contract and the information under Art. 10, Para 1 and 2, in case this happens after concluding the contract.

(3) Para 1 shall not apply to:

1. financial services whose price depends on fluctuations in the financial market, that may occur during the period when the consumer is entitled to withdraw of the contract and outside the suppliers control, such as services related to:

- a) foreign exchange,
- b) money market instruments,
- c) transferable securities,
- d) units in collective investment undertakings,
- e) financial-futures contracts, including equivalent instruments, which have cash-settled obligations for payment;
- f) forward interest-rate agreements,
- g) interest-rate swaps, currency swaps and shares swaps,
- h) options to acquire or dispose of any instruments referred to in Para 3 including equivalent cash-settled instruments including options on currency and on interest rates;

2. travel and baggage insurance policies or similar short-term insurance policies of less than one month duration;

3. contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of waiver;

4. credit contracts, intended for acquiring or keeping the right of ownership of land or building, which is built or is about to be built, as well as for carrying out repair or improvements in real estate.

(4) At exercising his/her right of withdrawal of the concluded contract the consumer shall notify the supplier before the expiry of the term under Art. 12, Para 1 or 2. The term shall be considered as kept, if the notification, on paper or other durable medium, accessible by the recipient, has been sent prior to the expiration of the respective term.

(5) In case, where with connection to a contract for distance marketing of financial service, another distance contract has been concluded between the supplier under the first contract and a third party and if the consumer exercises his/her right of withdrawal as provided for in Art. 12, Para 1 or 2 of the preliminary contract, the contract between the supplier and the third party shall be terminated, and the consumer shall not owe indemnity and/or penalty.

(6) (amend. - SG 61/14, in force from 25.07.2014) Paragraphs 1 and 2 shall not apply in the cases referred to in Art. 57 and 161k of Consumer Protection Act.

Art. 13. (1) In case the consumer exercises his/her right of withdrawal of the concluded contract for distance marketing of financial services as provided for in Art. 12, Para 1 or 2, he/she shall pay the supplier in 7-days term only the financial services under the contract that have actually been provided. Before expiration of the term for exercising the right of withdrawal the fulfillment of the contract may start only if the consumer has explicitly agreed for this, and in this case he/she shall not lose his/her right under Art. 12, Para 1 and 2. The sums, due by the consumer, may not exceed the part of the financial services provided to the total value of the financial services, provided under the contract, as their amount shall not have nature of indemnity and/or penalty.

(2) The supplier may not require the consumer to pay for the provided financial service, in case he/she has started the fulfillment of the contract before the expiry of the term under Art. 12, Para 1 and 2 and in case this has not explicitly been requested by the consumer.

(3) The supplier shall inform the consumer in appropriate way before the conclusion of the contract about the sum owed by him/her with regards to Art. 8, Para 1, item 3, letter "a".

(4) In case the consumer exercises his/her right of withdrawal of the concluded contract for distance marketing of financial services and the supplier is unable to prove, that he/she has informed him/her for the price of the financial service, the consumer shall not pay for the service received.

(5) The supplier shall return all the sums, paid by him/her, except for the amount referred to in Para 1, but not later than 30 days, considered from receiving the notification of the consumer for exercising his/her right of waiver.

(6) The consumer shall return to the supplier all the sums and/or property, he/she has received from the supplier no later than 30 calendar days, considered from the day on which the supplier receives the

notification of waiver

Art. 14. (1) Providing distance financial services for the consumer against payment without his/her preliminary explicit request shall be prohibited.

(2) In case the consumer receives service, which he/she has not required preliminarily and explicitly, he/she shall not owe payment for the service to the one, who has provided it. The lack of answer by the consumer does not mean that he/she agrees.

Art. 15. (amend. – SG 23/09, in force from 01.11.2009) In case the requirements of Art. 8, Para 1 and 4, Art. 9 and Art. 10, Para 1, 2 and 3, the consumer may terminate the contract in one month term, considered from the expiry of the term under Art. 12, Para 1 and 2, without owing indemnity and/or penalty.

### **Chapter five.**

#### **COMMERCIAL COMMUNICATIONS AND BURDEN OF PROOF**

Art. 16. The commercial communications, used by the supplier of financial services, shall meet the following requirements:

1. to be easily acknowledged as trade ones;
2. to allow clear ascertainment of the natural or of the legal person, on who's behalf they have been carried out;
3. to present clearly and unambiguously the proposition for competitions or other promoting propositions as such;
4. to present clearly and unambiguously the conditions for participation in the competitions under item3.

Art. 17. (1) The prior agreement of the consumer at using the following means of distance communication by the supplier of the financial services shall be required:

1. automatic calling systems without human intervention;
2. fax;
3. other means of distance communication, different from the ones referred to in items 1 and 2, which allow the performance of individual communication.

(2) Using means of distance communication by the supplier, different from the ones, indicated in Para 1 shall not entail costs for consumers.

Art. 18. (1) In case of contracts for distance marketing of financial services, the supplier shall prove, that he/she has:

1. fulfilled his/her obligations for providing information to the consumer;
2. kept the terms referred to in Art. 12, Para 1 or 2;
3. received the consent of the consumer for concluding the contract and, if it's necessary, for its fulfillment for the period, during which the consumer is entitled to withdraw from the concluded contract.

(2) In order to prove the prior contract information, as well as statements, directed in accordance with this Act, Art. 293 of the Commerce Act shall be applied, and regarding the electronic statements – the Electronic Document and Electronic Signature Act shall be applied.

(3) The prior contract information, as well as the statements, made on the phone, other means for distance voice communication, video connection or electronic mail, shall be recorded with the consent of the other party and have evidential force for ascertaining the circumstances included in them.

(4) Each clause of a contract for distance marketing of financial services, which provides, that the

burden for proving the fulfillment of the obligations of the supplier, provided in this Act, shall be on the consumer's expense, is void.

(5) Regarding the contract for distance marketing of financial services Art. 143-148 of the Consumer Protection Act.

## **Chapter six.**

### **CONSUMER DISPUTES AND COMPLAINTS**

Art. 19. The consumers shall be entitled to file complaints at the Commission for protection of the consumers, connected with contracts for distance marketing of financial services.

Art. 20. The claims for termination or prohibition of actions or trade practices under this Act, which violate the collective interests of the consumers, and the claims for indemnity shall be filed following the conditions and under the procedure of Art. 186 – 190 of the Consumer Protection Act.

Art. 21. (1) The Commission for protection of the consumers and the associations of the consumers shall make clear the rights and obligations of the consumers in connection with the contracts for distance marketing of financial services, they shall provide free of charge advices and information for their rights and shall collaborate for solving consumers disputes and complaints.

(2) (amend. - SG 57/15) The consumers shall be entitled to approach to conciliation commissions, created by the order of Chapter Nine, Section III of the Consumer Protection Act, in case their rights and legal interests have been violated.

## **Chapter seven.**

### **CONTROL**

Art. 22. (1) (amend. – SG 82/09, in force from 16.10.2009; amend. – SG, 14/15) The control under this Act shall be carried out by the Commission for protection of the consumers to the Minister of Economy.

(2) In order to carry out control for observing the Law the Chairman of the Commission for protection of the consumers shall authorize with order the officials of its administration.

Art. 23. (1) At fulfilling his/her official duties the officials under Art. 22, Para 2 shall be entitled:

1. to have access to all documents, connected directly or indirectly to violation of this Act or of the legislation of the Member States of the European Union, implementing the requirements of Directive 2002/65/EC of the European parliament and the Council concerning the distance marketing of consumer financial services, regardless of the form of the document;

2. to order to each person to provide information for the violations under item 1 that he/she is aware of;

3. to carry out inspections at place.

(2) At fulfilling his/her official duties under Art. 22, Para 2 shall keep the official, bank, insurance, the professional or the trade secret and not to announce data of the inspections before their finishing, as well as not to use the information of the inspection besides its purpose.

(3) The Chairman of the Commission for Protection of the Consumers shall be entitled to:

1. order in writing the violator to stop the violation under Para 1, item 1;

2. demand from the violator to declare that he/she will discontinue the violation under Para 1, item 1 and, if it's necessary, to oblige him/her to make public the declaration;

3. to order termination or prohibition of any violation under Pare 1, item 1 and, if it's necessary, to

make public the order for termination or prohibition of the violence

Art. 24. The provisions of this Chapter shall not limit the authority of the controlling bodies, provided by virtue of other normative acts.

### **Chapter eight.** **ADMINISTRATIVE PENAL PROVISIONS**

Art. 25. Whoever violates Art. 8, 9, Art. 10, Para 1, 2 and 3 and Art. 13, Para 3 and does not provide information to the consumer, shall be punished with fee in amount of from 500 to 2000 BGN, and the sole traders and legal persons – with property sanction in amount of from 1000 to 4000 BGN.

Art. 26. Whoever violates Art. 14, Para 1 and Art. 17, Para 1 and 2 providing distance financial service without explicit and preliminary request and/or consent of the consumer, shall be punished with fee in amount of from 1000 to 2500 BGN, and the sole traders and legal persons – with property sanction in amount of from 2000 to 5000 BGN.

Art. 27. Whoever violates Art. 17, Para 2 and demands or accepts payment of costs by consumer, related to using means of distance communication by the supplier, shall be punished with fee in amount of from 500 to 2000 BGN, and the sole traders and legal persons – with property sanction in amount of from 1000 to 4000 BGN.

Art. 28. For non-fulfillment of order under Art. 23, Para 1, item 2 and Para 3 the guilty persons shall be punished with fee in amount from 250 to 1000 BGN, and the sole traders and legal persons – with property sanction in amount of from 500 to 2000 BGN.

Art. 29. At repeated offence under Art. 25-28 the guilty persons shall be punished with fee, and the sole traders and legal persons – with property sanction in double amount.

Art. 30. (1) The acts of findings shall be compiled by the officials under Art. 22, Para 2.

(2) The penal decrees shall be issued by the Chairman of the Commission for Protection of the Consumers or by officials, specified by him/her.

(3) The ascertaining of the offences, the issue, appeal and fulfillment of the penal decrees shall be carried out by the procedure of the Administrative Violations and Penalties Act.

### **Additional provisions**

§ 1. In the sense of this Act:

1. "Financial service" means any service of a banking, credit, insurance, additional voluntary pension insurance via personal installments, investment factoring, as well as providing payment services.

2. "Means of distance communication" shall be any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the distance marketing of a service;

3. "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, including floppy disks, CD-ROM, DVD or hard disk of the consumer's computer on which the electronic message has been stored.

4. "Operator or supplier of a means of distance communication" means any natural or legal person whose trade or business activity involves providing the suppliers one or more means of distance communication.

5. "Repeated" shall be the offence, committed in one year period, considered from entering into force of the penal decree, with which penalty has been imposed for offence of the same nature.

§ 2. This Act shall introduce the provisions of Directive 2002/65/EC of the European parliament and the Council concerning the distance marketing of consumer financial services.

.....

§ 11. (amend. – SG 82/09, in force from 16.10.2009; amend. – SG, 14/15) The execution of this Act shall be assigned to the Minister of Economy.

§ 12. The Act shall enter into force from 1 January 2007, except for the § 4, items 1 and 5, which shall enter into force from the day on which the Electronic Commerce Act enters into force.

The Act was adopted by the 40th National Assembly on December 7th, 2006 and was affixed with the official seal of the National Assembly.

**Transitional and concluding provisions  
TO THE PAYMENT SERVICES AND PAYMENT SYSTEMS ACT**

(PROM. – SG 23/09, IN FORCE FROM 01.11.2009)

§ 21. The Act shall enter into force from 1 November 2009, except for § 10, which shall enter into force from the day of its promulgation in the State Gazette.

**Transitional and concluding provisions  
TO THE ACT ON AMENDMENT OF THE TOURISM ACT**

(PROM. – SG 82/09, IN FORCE FROM 16.10.2009)

§ 59. The Act shall enter into force from the day of its promulgation in the State Gazette.

**Transitional and concluding provisions  
TO THE ACT AMENDING AND SUPPLEMENTING THE CONSUMER PROTECTION ACT**

(PROM - SG 61/14, IN FORCE FROM 25.07.2014)

§ 91. The Act shall enter into force from the date of its promulgation in the State Gazette.

**Transitional and concluding provisions  
TO THE ACT AMENDING AND SUPPLEMENTING THE PAYMENT SERVICES AND  
PAYMENT SYSTEMS ACT**

(PROM. - SG 20/18, in force from 06.03.2018)

§ 28. The Act shall enter into force on the day of its promulgation in the State Gazette with the exception of:

1. Article 47, which comes into force once the European Commission has published the electronic brochure on consumer rights under Art. 106 (2) of Directive (EU) 2015/2366 and Art. 71, para. 2, item 3, Art. 72, para. 3, item 4, para. 4, Item 1, Art. 73, para. 2, item 3, para. 3, item 1 and Art. 100, which shall enter into force 18 months after the entry into force of the regulatory technical standards, which the European Commission accepts under Art. 98 (4) of Directive (EU) 2015/2366; until the entry into force of Art. 100, para. 1 - 6 payment service providers comply with the requirements of Final Guidelines on the Security of Internet Payments of 19 December 2014 of the European Banking Authority;

2. Article 102, which shall enter into force on 30 April 2018, and Art. 103 to 109, which shall enter into force on 31 October 2018;

3. paragraph 16, point 2, letter "c" of the Transitional and Concluding Provisions concerning para. 8, which shall enter into force on 1 January 2019;

4. Paragraphs 25 and 26, paragraphs 1 to 5 of the Transitional and Concluding Provisions, which shall enter into force on 1 July 2018.