

**Full title**

Federal Act Governing the Distance Marketing of Financial Services to Consumers (Distance Financial Services Act / FernFinG)

Federal Act to enact a Federal Act governing the distance marketing of financial services to consumers (Distance Financial Services Act / FernFinG) and to modify the Consumer Protection Act, the Act Governing Insurance Contracts, and the Act Governing the Supervision of the Securities Markets (NR: GP XXII RV 467 AB 490 p. 62. BR: AB 7047 p. 710.)  
[CELEX-Nr.: 32002L0065]

**Article 1****Federal Act Governing the Distance Marketing of Financial Services  
to Consumers (Distance Financial Services Act – FernFinG)****Chapter 1****General Provisions****Scope of Application**

**Section 1.** This Federal Act shall apply to distance marketing contracts on financial services between an entrepreneur and a consumer within the meaning of the Consumer Protection Act (KSchG), Federal Law Gazette no. 140/1979.

**Section 2.** (1) With regard to contracts on financial services comprising a basic agreement with ensuing successive services or an ensuing series of time-linked services of the same kind, the provisions of this Federal Act shall apply only to the basic agreement.

(2) If the contracting parties have not concluded any basic agreement but successive or separate and time-linked services of the same kind are performed between them, the information duties set forth in Sections 5 and 6 shall apply only to the first service. If, however, no service of the same kind has been performed over a period exceeding one year, such information duties shall apply to the next service.

**Definitions**

**Section 3.** Within the meaning of this Federal Act, the following definitions shall apply:

1. Distance marketing contract: a contract concluded with the exclusive use of one or several remote communication media within the scope of a distribution or service system of the entrepreneur organised for the purpose of distance marketing;
2. Financial service: any banking service as well as any service in connection with the granting of a loan, insurance, old age provision for individuals, investment or payment;
3. Remote communication medium: any means of communication that can be used for the distance marketing of a service between the parties without the simultaneous physical presence of the entrepreneur and of the consumer;
4. Permanent storage medium: any medium permitting the recipient to store information addressed to him/her personally in such a way that s/he can subsequently examine it for a period that is adequate for information purposes, and allowing for the unaltered reproduction of the stored information.

**Ineffective Agreements**

**Section 4.** Where agreements to the consumer's detriment deviate from the provisions set forth in this Federal Act, they shall be ineffective.

## **Chapter 2**

### **Information Duties**

#### **Information on Distribution**

**Section 5.** (1) In good time prior to his/her contract statement (offer or acceptance), the consumer shall be furnished with the following information, whose business purpose must be plainly discernible, in a clear and comprehensible manner suited to the type of remote communication medium used:

1. On the entrepreneur:
  - a) name (company) and main business activity of the entrepreneur, the geographical address of its operation and any other address that is relevant for the business relationship between the contracting parties;
  - b) Name (company) of the representative, if any, of the entrepreneur in the Member State where the consumer is resident, as well as the geographical address that is relevant for the business relationship between the consumer and said representative;
  - c) if the consumer is to be in a business relationship with a commercially active person other than the entrepreneur: name (company) of such person, the capacity in which s/he acts vis-à-vis the consumer, as well as the geographical address relevant for the business relationship between the consumer and said person;
  - d) if the entrepreneur is registered in the company register or in a comparable foreign public register: the company register number and the company register court or the comparable foreign public register and the identification used in this register, and
  - e) where a licence is required for the entrepreneur's activity, name and address of the competent supervisory authority;
2. On the financial service:
  - a) a description of the major characteristics of the financial service;
  - b) the overall price that the consumer owes the entrepreneur for the financial service, including all related commissions, fees and charges and all taxes collected by and payable through the entrepreneur or, if no exact price can be given, the basis used for its calculation, thus enabling the consumer to verify the price;
  - c) if applicable, a reference that the financial service concerns financial instruments that carry specific risks due to their specific characteristics or operations to be implemented, or whose price is subject to fluctuations in the financial market that are beyond the entrepreneur's control, as well as a reference that proceeds generated in the past are no indicator for future proceeds;
  - d) a reference to possible further taxes or costs not collected by the entrepreneur or charged by him/her;
  - e) the limitation, if any, of the period of validity of the information provided;
  - f) details of payment and performance, and
  - g) all specific additional costs to be borne by the consumer for the use of the remote communication medium, to the extent that such additional costs are being charged;
3. On the distance marketing contract:
  - a) existence or non-existence of a rescission right pursuant to Section 8, the time limit and modalities for its exercise including the amount to be paid by the consumer pursuant to Section 12, if applicable, as well as the consequences of the non-exercise of this right;
  - b) the minimum duration of the contract, if it covers the performance of a permanent or regularly recurring financial service;
  - c) information about the parties' right to rescind the contract under the terms of the contract, including all forfeit monies or other burdens imposed in such cases;
  - d) practical information concerning the exercise of the rescission right including the address to which the statement of rescission must be sent;
  - e) the right used by the entrepreneur as a basis for establishing relations with the consumer prior to the conclusion of the contract;
  - f) proposed contractual agreements on the law to govern the contract and on court jurisdiction; and

- g) information on the languages used for communicating information and contract terms, as well as on the languages the entrepreneur promises to use for communicating with the consumer with the latter's consent for the duration of the contract;
  - 4. On legal remedies:
    - a) information on the consumer's access to extrajudicial complaints or conciliation procedures and the prerequisites for this access, and
    - b) information on the existence of a guarantee fund or other compensation regulations not falling under Directive 94/19/EC on deposit-guarantee schemes, Official Journal L 135 of 31 May 1994, p. 5, and Directive 97/9/EC on investor-compensation schemes, Official Journal L 84 of 26 March 1997, p. 22.
- (2) The information furnished pursuant to Para 1 above shall be in accordance with the law which is assumed to apply to the contract in the event of its conclusion.
- (3) Other information duties shall remain unaffected.

### **Information on Telephone Calls to Consumers**

**Section 6.** (1) In the course of a telephone call to consumers, the entrepreneur's name or company and the business purpose of a call initiated by the latter shall be stated clearly and comprehensibly at the beginning of any call.

(2) Provided that the consumer has expressly agreed, in the course of a telephone call s/he needs to be furnished only with the following information, in due time prior to giving his/her contract statement (Section 5):

1. name (company) of the consumer's contact person and his/her relation with the entrepreneur;
2. description of the major characteristics of the financial service;
3. overall price that the consumer owes the entrepreneur for the financial service, including all related commissions, fees and charges as well as all taxes collected by the entrepreneur, or, if no exact price can be given, the basis used for its calculation, thus enabling the consumer to verify the price;
4. a reference to possible further taxes or costs not collected by the entrepreneur nor charged by him/her, and
5. existence or non-existence of rescission right pursuant to Section 8 and the time limit and modalities for its exercise, including the amount to be paid by the consumer pursuant to Section 12, if applicable.

(3) In the course of a telephone call, the consumer shall also be notified that further information may be furnished upon request, as well as about the kind of information. In any case, the entrepreneur shall furnish all information at the latest upon fulfilling his/her obligation set forth in Section 7.

(4) Other information duties shall remain unaffected.

### **Provision of the Contract Terms and Distribution Information**

**Section 7.** (1) The entrepreneur shall submit to the consumer in good time prior to giving his/her contract statement all terms of the contract as well as the information listed in Section 5, in hard copy or on another permanent storage medium available and accessible to the consumer.

(2) If, upon the consumer's request, the contract was concluded by means of a remote communication medium not permitting the submission of the contract terms and information pursuant to Para 1 above, the entrepreneur shall fulfil the obligation pursuant to Para 1 above promptly upon conclusion of the distance marketing contract.

(3) The consumer shall be entitled at any time of the contract relationship to request the contract terms to be submitted in hard copy. Moreover, s/he shall be entitled to use another remote communication medium, unless this is inconsistent with the contract concluded or with the type of financial service performed.

## **Chapter 3**

### **Rescission of Contract**

#### **Right to Rescind the Contract**

**Section 8.** (1) The consumer shall have the right to rescind the contract or his/her contract statement prior to the expiry of the periods set forth in Para 2 below.

(2) The time limit for rescission shall be 14 days, except for life insurances within the meaning of the Directive 2002/83/EC concerning life assurance, Official Journal L 345 of 19 December 2002, p. 1, and for distance marketing contracts on old-age provision for individuals where the time limit shall be 30 days. In any case, the time limit shall be deemed complied with if the rescission is stated in writing or on another permanent storage medium available and accessible to the recipient and if such statement has been sent off prior to the expiry of the time limit.

(3) The time limit for rescission shall begin on the day of conclusion of the contract. For life insurances (Para 2 above), the time limit shall begin at the time when the consumer is notified of the conclusion of the contract.

(4) If, however, the consumer has received the contract terms and marketing information only after conclusion of the contract, the time limit for rescission shall begin upon receipt of all such terms and information.

(5) Within the time limit for rescission, the consumer's express consent shall be required for commencing on the performance of the contract.

**Section 9.** If, in connection with a distance marketing contract on a financial service, the consumer has concluded another distance marketing contract for services of the entrepreneur or a third party on the basis of an agreement between the third party and the entrepreneur, the rescission of the contract on the financial service shall also apply to this additional contract.

#### **Exemptions from the Right of Rescission**

**Section 10.** In the following cases, the consumer shall have no right of rescission with regard to:–

1. contracts on financial services whose price in the financial market is subject to fluctuations that are beyond the entrepreneur's control and may occur within the time limit for rescission, in particular on services in connection with:–
  - a) foreign currencies,
  - b) money market instruments,
  - c) tradable securities,
  - d) shares in investment companies,
  - e) financial futures including equivalent instruments with cash payment,
  - f) forward rate agreements (FRA),
  - g) interest rate swaps and forex swap deals as well as swaps on the basis of shares or of the share price index (equity swaps), and
  - h) call or put options on all instruments listed in a) through g), including equivalent instruments with cash payment, such as, in particular, currency options and interest rate options;
2. contracts on travel and baggage insurances or similar short-term insurances with a duration of less than one month, and
3. contracts that have been fully executed by both parties with the consumer's express approval before the consumer exercises his/her right of rescission.

**Section 11.** Sections 8 through 10 shall not apply to loan agreements that were cancelled pursuant to Section 5h KSchG (Consumer Protection Act) or Section 9 of the Time Share Act (Teilzeitnutzungsgesetz) of Federal Law Gazette I no. 32/1997.

**Section 12.** (1) If the consumer rescinds the contract pursuant to Section 8, the entrepreneur may request from him/her only the immediate payment of the consideration for any contractually agreed services actually rendered up to that time. The sum to be paid shall not exceed the amount commensurate to the part of the services already performed in proportion to the total volume of the

services agreed upon. The entrepreneur may request payment of this consideration only if s/he has fulfilled his/her information duty pursuant to Section 5 (1) 3 (a) and if the consumer has expressly agreed to performance of the contract to be commenced prior to the expiry of the time limit for rescission.

(2) If the consumer rescinds the contract pursuant to Section 8:–

1. the entrepreneur shall refund the consumer without delay, but not later than 30 days from receipt of the statement of rescission, any sum received from the latter under the contract, deducting the sum mentioned in Para 1 above;
2. the consumer shall return to the entrepreneur without delay, but not later than 30 days from dispatching the statement of rescission, any amounts of money and objects received from the latter.

## **Chapter 4 Final Clauses**

### **Entry into Force**

**Section 13.** This Federal Act shall enter into force as of 1 October 2004. It shall not be applied to contracts concluded prior to this date.

### **References**

**Section 14.** Where a reference to other federal acts is made in this Federal Act, such reference shall apply to the respective federal act as amended.

### **Enforcement**

**Section 15.** The Federal Minister of Justice shall be charged with enforcing this Federal Act.

### **Implementation Reference**

**Section 16.** This Federal Act implements 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, Official Journal L 271 of 9 October 2002, p. 16.