

# Contribution to Growth: Legal Aspects of Protecting European Consumers

# Delivering improved rights for European citizens and businesses





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## Contribution of Internal Market and Consumer Protection to Growth

### **Abstract**

This study contains an analysis of the legal aspects of protecting European consumers, advanced during the 7<sup>th</sup> and 8<sup>th</sup> legislative period of the European Parliament (2009 - 2019). It examines policy developments in the area of consumer protection and (digital) single market, and identifies new substantive rights offered to EU consumers.

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## LIST OF ABBREVIATIONS

### Directives

**Off-Premises Directive:** Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises;

**Old Package travel Directive:** Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

**Unfair Contract Terms Directive:** Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

**Satellite and Cable Directive:** Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;

**Distance Contract Directive:** 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;

**Price Indication Directive:** Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;

**Consumer Sales Directive:** 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;

**Framework Directive:** Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services;

**Unfair Commercial Practices Directive:** 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council;

**Misleading and Comparative Advertising Directive:** Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;

**Consumer Credit Directive:** Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC;

**Injunctions Directive:** Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests;

**Consumer Rights Directive:** 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;

**Directive on Alternative Dispute Resolution:** Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;

**Mortgage Credit Directive:** Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010;

**New Package travel Directive:** Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC;

**Directive on postal services:** Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service;

**Directive on privacy and electronic communications:** 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;

**Authorisation Directive:** Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services;

**Access Directive:** Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities;

**Universal Service Directive:** Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services;

**Prospectus Directive:** Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;

**Market Abuse Directive:** Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC;

**Directive on the harmonisation of transparency requirements:** Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC;

**Directive on the comparability of fees:** Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;

**Directive on deposit guarantee schemes:** Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes;

**Directive on payment services in the internal market:** Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/E;



**E-money Directive:** Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;

**Solvency II Directive:** Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

**Omnibus II Directive:** Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority);

**Insurance Distribution Directive:** Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast);

**Motor Insurance Directive:** Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;

**Directive on markets in financial instruments:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

**Market Abuse Directive:** Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse;

**Directive on the coordination of laws, regulation and administrative provisions:** Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

**Directive on Alternative Investment Fund Managers:** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

**Payment Services Directive:** Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC 2302;

**Directive on Restriction of Hazardous Substances in Electrical & Electronic Equipment:** Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment **and** Directive (EU) 2017/2102 of the European Parliament and of the Council of 15 November 2017 amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment;

**Pyrotechnic Articles Directive:** Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (recast);

**Recreational Crafts Directive:** Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC;

**Civil Explosives Directive:** Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) Text with EEA relevance;

**Simple Pressure Vessels Directive:** Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels;

**Electromagnetic Compatibility Directive:** Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast);

**Non-automatic Weighing Instruments Directive:** Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments;

**Lifts Directive:** Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts;

**ATEX Directive:** Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast);

**Low Voltage Directive:** Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits;

**Radio Equipment Directive:** Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC;

**Pressure Equipment Directive:** Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment;

**Insurance Distribution Directive:** Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast);

**Payment Services Directive 2:** Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC;

**Directive on the energy performance of buildings:** Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings **and** Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency;

**Directive on energy efficiency:** Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC **and** Directive (EU) 2018/2002 of the European

Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency;

**Directive on indication by labelling and standard product information of the consumption of energy and other energy-related products:** Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products;

**Directive on the promotion of clean and energy-efficient road transport vehicles:** Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles;

### **Regulations**

**BEREC Regulation:** Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office;

**Sea and Inland Waterway Travel Regulation:** Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004;

**Bus and Coach Transport Regulation:** Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004;

**Regulation on Online Dispute Resolution:** Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC;

**Regulations on Roaming Charges:** Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union **and** Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets;

**General Data Protection Regulation:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

**Consumer Protection Cooperation Regulation:** Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004;

**Regulation on cross-border Portability of Online Content Services:** Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market;

**WIFI4EU Regulation:** Regulation (EU) 2017/1953 of the European Parliament and of the Council of 25 October 2017 amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities;

**Regulation on Geo-Blocking:** Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC;

**Regulation on cross-border Parcel Delivery Services:** Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services;

**Rail Passenger Regulation:** Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations;

**Air Travel Regulations:** Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 **and** Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;

**Regulation on consumer protection cooperation:** 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;

**Regulation on short selling:** Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps Text with EEA relevance;

**Regulation on prudential requirements for credit institutions and investment firms:** Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms **and** Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

**Regulation on Securitisation:** Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;

**Prospectus Regulation:** Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC;

**Market Abuse Regulation:** Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;

**Regulation on European venture capital funds:** Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds;

**Regulation on European social entrepreneurship funds:** Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds;

**Regulation on European long-term investment funds:** Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds;

**Regulation on money market funds:** Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;

**European Market Infrastructure Regulation:** Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

**Securities Financing Transactions Regulation:** Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012;

**Regulation on central securities depositories:** Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;

**Regulation on key information documents for packaged retail and insurance-based investment products:** Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);

**Regulation on multilateral interchange fees:** Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions;

**SEPA Regulation:** Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;

**Regulation on charges for cross-border payments:** Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001;

**Solvency II Delegated Regulation:** Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

**Regulation on markets in financial instruments:** Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

**Benchmark Regulation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014;

**Regulation on General Safety of Motor Vehicles:** Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor;

**Regulation on cosmetic products:** Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products;



**Regulation on Personal Protective Equipment:** Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC;

**Regulation on Cableways Installation:** Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC;

**Regulation on Gas Appliances:** Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC;

**Regulation on Medical Devices:** Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC;

**Regulation on In vitro Diagnostic Medical Devices:** Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU;

**Regulation on Approval and Market Surveillance of Motor Vehicles:** Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC;

**Regulation on mercury:** Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008;

**Regulation on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury:** Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury#;

**Regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework:** Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/E;

**Regulation on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change:** Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC;

**Regulation setting for energy labelling:** Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU;

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## EXECUTIVE SUMMARY

The 7<sup>th</sup> and 8<sup>th</sup> legislative periods greatly contributed to strengthening consumer protection in the EU. During these periods, which can also be characterised as a time of searching for new directions in developing EU consumer law, several important legal instruments were adopted that aimed directly at increasing the level of consumer protection. These include: the Consumer Rights Directive of 2011 (replacing the Off-Premises and the Distance Contract Directive), the Package Travel Directive of 2015 (replacing the old Package Travel Directive of 1990), the Mortgage Credit Directive of 2014, the Sea and Inland Waterway Travel Regulation of 2010 and the Bus and Coach Transport Regulation of 2011. Additional consumer protection instruments remain in the legislative pipeline, with a good chance of at least some of them being adopted before the end of the 8<sup>th</sup> period (proposals of a Digital Content Directive and a Consumer Sale of Goods Directive). Although protection through information is still a very relevant aspect of protecting European consumers, the European Union is also actively pursuing other ways to secure consumer interests, in particular by strengthening the right of withdrawal and by providing clear remedial systems. The Consumer Rights Directive introduced a horizontally applicable right of withdrawal, general information duties, a 30-day delivery period, as well as rights protecting consumers against excessive payments for services accompanying the main contract. On the basis of the Mortgage Credit Directive, EU consumers have at least seven days in which to assess offers or withdraw, as well as the right to convert a credit agreement and the right to early repayment, and the traders are burdened with the obligation to assess the creditworthiness of the consumer. The new Package Travel Directive not only has a wider scope of application, but also introduces new consumer rights before the package starts (the transmission right, the right to a price reduction, the right to withdraw from a contract if the contract terms are altered, the right to terminate the contract, an extended right of withdrawal) and new consumer rights after the package starts (retailer responsible for the performance of the package, remedies for a lack of conformity). The Sea and Inland Waterway Travel Regulation of 2010 and the Bus and Coach Transport Regulation of 2011 introduced informational duties, the obligation of the carrier to offer a choice between re-routing or reimbursement, as well as the obligation to assist passengers, and a general right to compensation for death or personal injury, as well as for the loss of or damage to luggage. In addition, both regulations guarantee the right to non-discriminatory transport conditions, as well as assistance at no added expense and the right to compensation for the loss or damage to mobility equipment to disabled persons and persons with reduced mobility. The increase in consumer protection during the 7<sup>th</sup> and 8<sup>th</sup> legislative periods was also caused by the instruments that are aimed at ensuring better efficiency of the EU consumer law. The Directive on Alternative Dispute Resolution for Consumer Disputes of 2013 ensured that consumers can, on a voluntary basis, submit complaints against traders to entities offering alternative dispute resolution procedures. It also harmonised the quality requirements for ADR entities and ADR procedures, while providing for a simple and speedy settlement mechanism. The Regulation on Online Dispute Resolution for Consumer Disputes of 2013, accompanying the directive introducing an ODR-platform, which was launched in January 2016. The ODR-platform is an interactive web-interface that can be accessed electronically, for free or for a very small charge, which allows the online out-of-court resolution of disputes between consumers and traders relating to online purchases of goods and services. So far, 410 ADR bodies that can handle complaints have been notified to the Commission and more than 24 000 complaints have been submitted.



Further proposals that are still undergoing the legislative process include: a proposal on a new Consumer Protection Cooperation Regulation and, as a part of the New Deal for Consumers, a proposal for a Directive on Representative Actions for the Protection of the Collective Interests of Consumers, aimed at replacing the Injunctions Directive of 2009.

European consumers are also beneficiaries of actions and instruments aimed at strengthening various aspects of the EU internal market. These include a vast number of instruments developed as a part of the Single Digital Market initiative, combining strictly consumer-oriented measures with market design measures: the Regulations on Roaming Charges, the Regulation on the Promotion of Internet Connectivity in Local Communities, the Regulation on the Portability of Online Content, the Cross-border Parcel Delivery Regulation, the General Data Protection Regulation, the Geo-blocking Regulation, the proposed European Electronic Communications Code, the proposed Regulation on the Body of European Regulators for Electronic Communications, the proposed E-privacy Regulation, the proposed Regulation on the Free-flow of Non-personal Data, and the proposed Directive on Copyrights in the Digital Single Market. The same indirect effect is achieved through legislative acts aimed at creating a fully functioning, transparent and safe financial market, i.e. the introduction of a harmonised statutory framework for banks, insurance companies, pension funds and providers of a broad range of financial products and services (consumer finance and payments as well as insurance and pensions). Another area that brings benefits to EU consumers is product safety and market surveillance, with specific rules introduced concerning the safety of toys, electrical and electronic goods, cosmetics, chemicals and other specific product groups, as well as new tools and guidelines for the proper functioning of RAPEX (wikis, the interface between RAPEX and other market surveillance systems). On top of that, the legislative debate on tackling dual quality products is well under way.



Like all legislation, the efforts of EU law aimed at enhancing the position of consumers in the market should follow and reflect the market. The trends that are driving the development of the EU market (the platform economy, digitalisation, data flow, etc.) have a global character. Although their consequences influence each and every Member State, by their nature, an effective legislative answer can only be given at the EU level.

This provides a very strong foundation for EU legislative initiatives, in accordance with the subsidiarity principle. Considering the global economy, and the global players engaged, the desired effects cannot be achieved at a national level with a comparable level of effectiveness. It means that, due to changes in the market structure and functioning, the EU has gained unprecedented economy- and technology-based legitimacy.

Future deliberations on developing consumer policy should consider the possibilities and risks that rapidly developing technology creates for the EU market. These include, in particular, the platformisation of the economy, the potential created by the automated and personalised protection and use of algorithms, AI and blockchain technology. The new technologies help effectively overcome certain barriers for building a fully functioning internal market, as they enable access to sellers and service providers in other states, allow efficient contact between the supply and demand sides, provide practical tools for addressing language barriers and informational deficiencies, as well as facilitating the personalisation of the market. At the same time, considerable risks appear in relation to unauthorised access and use of consumers' personal data, which might lead to discrimination and exclusion.

Policy considerations should also take into account the changing structure of the market, i.e. the consequences of the fading relevance of the consumer – business distinction. While this distinction was never crystal clear, it has almost entirely lost its meaning in relation to the platform economy. Small businesses that operate on online platforms are economically in the same position as consumers, but they do not enjoy any of the protection that the consumers do.

The law-making policy in the area of consumer protection should also recognise the vital importance of the environmental policy pursued by the EU. Not only will the environmental policy impact increasingly wide areas of the EU legislation, but also the effective protection of environment is perceived as very important and in need of further strengthening by an overwhelming majority of European citizens. Hence, any evaluation of new legislative proposals should take into account the ecological impact they might have.

Future legislative process should reflect the increased density and more complex character of the growing body of EU law, in order to facilitate the effective functioning of EU law at a national level.

# 1. GENERAL INFORMATION

## KEY FINDINGS

This analysis aims to present an overview of the progress made concerning the legal aspects of protecting European consumers in the period between 2008 and 2019, i.e. the 7<sup>th</sup> and 8<sup>th</sup> legislative periods of the European Parliament. While the focus of the analysis is on the substantive increase in consumer protection, it also presents the wider context of the process, i.e. the interactions between consumer protection and other policy areas. The analysis employs a classical methodology, based on legislative acts, available analytical reports, the literature, as well as market reports.

## 1.1. The aim of the analysis

The aim of this in-depth analysis is to provide a summary of the achievements in the area of consumer protection and the internal market. The analysis concentrates on the legal aspects of consumer protection, i.e. on the legislative initiatives that aim to either harmonise or increase the level of consumer protection in the European Union. At the same time, the report shows that European consumers draw benefits not only from the legislative actions that are directly focused on increasing their welfare. EU consumers are also the ultimate beneficiaries of the growing internal market. Paradoxically, the actions that are not directly aimed at increasing the level of consumer protection, but those aimed at building a fully functioning internal market have recently had greater potential to reach the consciousness of EU consumers.

The analysis builds on the studies and evaluations performed to date for or by the EU bodies, and their methodologies in order to identify the most relevant parameters for an evaluation of achievements and benefits. It also presents the interaction and convergence between consumer protection and the Internal Market, as well as other policy instruments such as competition policy, economic governance and fiscal policy.

## 1.2. The scope of the analysis

The analysis covers the period between 2009 and 2019, i.e. the 7<sup>th</sup> and 8<sup>th</sup> legislative periods of the European Parliament. The enquiry is based on legislative acts proposed, proceeded and enacted during this period and contains: (1) a complete and systematically arranged list of rights created or strengthened for European consumers; (2) a list of legislative acts introduced, implemented or awaiting implementation; and (3) a list of gaps where improvement or strengthening of consumer protection is possible. In addition, it also contains a list of judgements of the Court of Justice of the European Union, issued on the basis of EU legislation aimed at consumer protection, and a selection of judgements based on market-building instruments that are important from the point of view of consumers.

## 1.3. Focus of the report

While the presentation focuses on the substantive increase of consumer protection taking into account substantial law as well as procedural law, the analysis also points out the legislative initiatives that strive at the further development of the Internal Market and building a genuine EU economic arena. Although these initiatives are not labelled as consumer protection measures, they do intend to have a positive impact on the welfare of consumers.

When it comes to legislative measures, the dynamic of consumer protection during the researched period tends to come from policy areas other than consumer protection. However, the direct aim of such measures is not to improve the level of protection of individual consumers, but rather to build an internal market without barriers. In actual fact, these market-building blocks that work towards bettering market conditions for consumers have had a very significant impact on the position of EU consumers during the last ten years. Consumer benefits and entitlements very often arise outside of consumer law measures.

## 1.4. Putting the development of consumer law between 2009 and 2018 into perspective – an overview

### 1.4.1. Harmonisation attempts

The 7<sup>th</sup> and 8<sup>th</sup> legislative periods can be characterised as a time when the European Union was searching for new directions regarding the concept underlining the consumer protection policy. The most important instrument on the negotiating table at the beginning of this period was the Consumer Rights Directive. The background work behind the directive,<sup>1</sup> as well as the initial proposal<sup>2</sup> of the directive, sought not only to pursue the aim of consumer protection, but was also directed at harmonising the consumer *acquis* (although the proposal of the directive was already limited in its scope when compared with the initial ideas). By the time the negotiations were concluded, the directive had lost two out of the original four building blocks (sales law and unfair contract terms rules), and had changed character: from full harmonisation to a targeted harmonisation directive.

In 2011, after the directive had been adopted, the European Commission proposed a regulation on the Common European Sales Law.<sup>3</sup> It was supposed to not only increase and harmonise the consumer protection measures, but primarily to harmonise the sales law in the European Union (both B2C and B2B transactions) by means of an optional instrument. This project failed to come to fruition: after prolonged but futile negotiations, on 16 December 2014 the Commission placed it on the list of proposals “to be modified or withdrawn”. On 9 December 2015 in the 2015 work programme the Commission presented proposals that technically replaced the Common European Sales Law.<sup>4</sup>

### 1.4.2. The Digital Single Market

The new direction in developing EU consumer protection measures was the Digital Single Market strategy, adopted by the Commission on 6 May 2015.<sup>5</sup> This strategy is the EU’s answer to the recent technological changes that have reshaped the functioning of the European economy, bringing forward both challenges and opportunities for growth (the internet as the main economic driver, digitalisation, use of data, etc.). While it was not a consumer protection strategy per se, the proposals put forward as a part of the strategy either directly or (more often) indirectly work towards enhancing the welfare of consumers.

The focus of the Digital Single Market strategy is to ensure access to online activities for individuals and businesses under conditions of fair competition, consumer and data protection, removing geo-blocking and copyright issues. The main idea is to eliminate the key differences between online and offline worlds, to break down barriers to cross-border online activity.

<sup>1</sup> i.e. the Green Paper on the Review of the Consumer Acquis, COM(2006) 744 final.

<sup>2</sup> Proposal for a Directive on consumer rights, COM(2008) 614 final.

<sup>3</sup> Proposal for a Regulation on a Common European Sales Law, COM(2011) 635 final.

<sup>4</sup> <http://www.europarl.europa.eu/legislative-train/theme-connected-digital-single-market/file-common-european-sales-law>.

<sup>5</sup> Commission, Communication, A Digital Single Market Strategy for Europe, COM (2015) 192 final.

In other words, the Digital Single Market aims to open up the technology-driven internal market to businesses and consumers, by removing obstacles that disrupt its full utilisation, and adding incentives that encourage EU citizens to make full use of it.

#### 1.4.3. The New Deal for Consumers

A new agenda, this time concentrated solely on consumer interests, i.e. the New Deal for Consumers, was announced by the European Commission on 11 April 2018. The New Deal focuses primarily on ensuring greater effectiveness of the enforcement mechanisms. It proposes to empower qualified entities to launch representative actions on behalf of consumers, and introducing stronger sanctioning powers for Member States' consumer authorities in order to be able to provide an adequate response to Dieselgate type cases. The effective penalties for violations of EU consumer law, according to the proposals put forward by the Commission, would mean that for widespread infringements that affect consumers in several EU Member States, the available maximum fine would be four per cent of the trader's annual turnover in each respective Member State (while Member States would be free to introduce higher maximum fines).

The New Deal for Consumers also aims towards strengthening consumer rights online, by proposing more transparency in online market places and on search results on online platforms; providing consumers with tools to enforce their rights and obtain compensation, offering better protection against unfair commercial practices, and tackling the dual quality of consumer products.

The New Deal intends to improve business conditions also for the EU traders, by removing the unnecessary burdens in the area of the right of withdrawal and introducing more flexibility in the way that traders communicate with consumers.

The legislative proposals put forward as a part of the New Deal include: Directive on representative actions for the protection of the collective interests of consumers (COM(2018) 184) and Directive on better enforcement and modernisation of EU consumer protection rules (COM(2018) 185)

### 1.5. The Treaty foundation for consumer protection

Consumer protection in the European Union has traditionally been approached as a derivative of the proper functioning of the internal market. Hence, consumer welfare is structurally connected with establishing or ensuring the functioning of the internal market, i.e. an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties (Art. 26 TFEU).

This approach stems from the TFEU and the interconnection that exists between Articles 114 and 169, but it is also easily perceptible in the choices of the legal foundation for instruments that either directly or indirectly aim at ensuring proper consumer protection.

Article 114 TFEU, which deals with the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States that have as their object the establishment and functioning of the internal market, sets out (para. 3) that the Commission, in its proposals concerning the establishment and functioning of the internal market concerning (among other things) consumer protection, will take as a base a high level of protection, taking into account in particular any new development based on scientific facts. Within their respective powers, the European Parliament and the Council are also seeking to achieve this objective.

Article 169, on the other hand, declares in para. 1 that, in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information,



education and to organise themselves in order to safeguard their interests. Paragraph 2 clarifies that the Union shall contribute to the attainment of these objectives through measures adopted pursuant to Article 114 in the context of the completion of the internal market, and measures that support, supplement and monitor the policy pursued by the Member States.

So while Article 114 refers to a high level of consumer protection as a base, according to Article 169 achieving the consumer protection policy goals is to be ensured through Article 114. This reflects in the legislative choices for the Treaty foundations in the widely understood consumer protection instruments. Apart from the data protection measures, all the instruments are based on Article 114 TFEU, sometimes without even referring to Article 169 TFEU. All the consumer protection measures are then achieved as internal market building blocks, which is also sometimes stressed by reference to Article 26 TFEU defining the internal market. The internal market without boundaries is then the ultimate goal of the EU consumer protection measures, with high and coherent standards established throughout the EU. What follows, even the instruments that do not, in principle, aim at increasing consumer welfare, contribute to achieving this goal by contributing to a better functioning internal market.

Table 1: Treaty foundation of EU instruments orientated towards consumer protection.

Legislative Act	Legal Foundation	Other Articles Mentioned in Recitals
<b><u>Directives:</u></b>		
Consumer Rights Directive 2011/83/EU	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26 (2) of the TFEU
Directive 2013/11/EU on alternative dispute resolution	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26 (2) of the TFEU; Article 38 of the Charter of Fundamental Rights of the EU
Mortgage Credit Directive 2014/17/EU	Article 114 of the TFEU	-/-
Package Travel Directive 2015/2302/EU	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26 (2) of the TFEU
<b><u>Regulations:</u></b>		
Regulation (EU) No 524/2013 on online dispute resolution	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26 (2) of the TFEU
Regulation (EU) No 2015/2120 and (EU) No 2017/920 on roaming charges	Article 114 of the TFEU	-/-
General Data Protection Regulation (EU) No 2016/679	Article 16 of the TFEU	Article 8 of the Charter of Fundamental Rights of the EU

Legislative Act	Legal Foundation	Other Articles Mentioned in Recitals
Consumer Protection Cooperation Regulation (EU) No 2017/2394	Article 114 of the TFEU	-/-
Regulation (EU) No 2017/1128 on cross-border portability of online content services	Article 114 of the TFEU	-/-
Regulation (EU) No 2018/302 on addressing unjustified geo-blocking	Article 114 of the TFEU	-/-
Regulation (EU) No 2018/644 on cross-border parcel delivery services	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26 (2), Article 14 of the TFEU
<b><u>Proposals:</u></b>		
Proposal for a Digital Content Directive (Proposal 2015/0278 (COD) – COM/2015/634 final)	Article 114 of the TFEU (cfr. p. 5 of the proposal)	-/-
Online and other distance sales of goods (Proposal 2015/0288 (COD) – COM/2017/0637 final)	Article 114 of the TFEU (cfr. p. 6 of the proposal)	-/-
Free Flow of non-personal Data (Proposal 2017/0228 (COD))	Article 114 of the TFEU (cfr. p. 4 of the proposal)	-/-
e-Privacy (Proposal 2017/0003 (COD))	Articles 16, 114 of the TFEU (cfr. p. 2 of the proposal)	Article 7 of the Charter of Fundamental Rights of the EU
Proposal for a Directive on representative actions for the protection of the collective interests of consumers (Proposal 2018/089 (COD) – COM/2018/0184 final)	Article 114 of the TFEU (cfr. p. 6 of the proposal)	Article 169 of the TFEU (p. 6)
Proposal for a Directive as regards better enforcement and modernisation of EU consumer protection rules (Proposal 2018/0090)	Article 114 and 169 of the TFEU (cfr. p. 7 of the proposal)	-/-

Legislative Act	Legal Foundation	Other Articles Mentioned in Recitals
(COD) – COM/2018/185 final)		

## 1.6. Methodology

This analysis is primarily based on the examination of the existing and proposed EU legislation. As requested by the ToF, the analysis also builds on the pre-existing studies and evaluations published by the European Commission and the European Parliament. It is additionally supplemented by the analysis of scholarly writing and market reports.



## 2. EU ACHIEVEMENTS IN THE CONSUMER PROTECTION AREA

### KEY FINDINGS

So far the 7<sup>th</sup> and 8<sup>th</sup> legislative periods have brought only three new legal instruments that directly aim at increasing the level of consumer protection in terms of introducing substantive consumer rights, namely: the Consumer Rights Directive of 2011, the Package Travel Directive of 2015 and the Mortgage Credit Directive of 2014. In reality, however, the increase in the consumer protection level is much more significant as it is fuelled not only by instruments that introduce substantive consumer rights, but also instruments that aim at a more effective enforcement of consumer rights and that strive towards building various blocks of a fully functioning internal market (i.e. digital single market, financial services market).

This chapter presents the instruments that contributed to achieving higher level of consumer protection: (1) by creating new substantive rights, (2) by making enforcement more effective (3) by contributing to a better functioning EU market that ultimately serves EU consumers. The chapter deals primarily with enacted acts but presents also those still in the legislative pipe.

### 2.1. The increase in consumer protection between 2009 and 2018: direct and indirect contributions

#### 2.1.1. Introduction

While the 7<sup>th</sup> and 8<sup>th</sup> legislative periods have so far brought about only a few new EU acts that directly aim at bettering the level of consumer protection in the EU, the real increase of consumer welfare achieved in this period goes far beyond the impact of these instruments. The instruments introduced with a view to increasing the effectiveness of consumer law enforcement, as well as numerous instruments that strive towards building a fully functioning EU market in its various sectors have substantially contributed to increasing the wellbeing of EU consumers.

#### 2.1.2. Direct actions

The first part of this chapter looks at the EU instruments that address consumer protection directly, presents the policy considerations behind those acts, the legislative process that led to their adoption, as well as the specific consumer entitlements they introduce. The analysis includes the enacted instruments, as well as the instruments that have already been proposed but are still undergoing the legislative process. The list of enacted instruments includes: the Consumer Rights Directive of 2011 (adopted on 25 October 2011, transposition period until 13 December 2013), the Mortgage Credit Directive 2014 (enacted on 4 February 2014, transposition period until 21 March 2016), the Sea and Inland Waterway Travel Regulation (EU) No 1177/2010 (enacted on 24 November 2010), the Bus and Coach Transport Regulation (EU) No 181/2011 (enacted on 16 February 2011) and the Package Travel Directive of 2015 (enacted on 25 November 2015, transposition period until 1 January 2018).

Regarding the ongoing legislative work, the catalogue includes two proposals put forward in 2015, i.e.: the proposals for a Digital Content Directive and the proposal for a Consumer Sale of Goods Directive, which are currently undergoing the adoption process. Two more recent proposals form part of the “New Deal for Consumers” initiative of 2018: a proposal as regards the Better Enforcement and Modernisation of EU Consumer Protection Rules, and a proposal on Representative Actions for the Protection of the Collective Interests of Consumers.

This part of the analysis also explores the initiatives that strive towards increasing the effectiveness of consumer rights enforcement. The philosophy behind the EU legislative solutions is to make sure that the standard they establish in the legal provisions is achieved in practice at a national level. A necessary component of such a system is not only to equip those consumers whose rights are violated with legal instruments that provide appropriate legal remedies, but also to encourage consumers to actually enforce these remedies, or alternatively to set up an enforcement system that would not require activity on the part of consumers. In the Digital Single Market strategy, the Commission began work on increasing the effectiveness of EU law by introducing two instruments aimed at making enforcement less cumbersome for consumers, including in the cross-border dimension (the Directive on Alternative Dispute Resolution for Consumer Disputes and the Regulation on Online Dispute Resolution for Consumer Disputes). At the same time, it proposed to make institutional enforcement more effective (the new Consumer Protection Cooperation Regulation). Enforcement is also a vital component of the New Deal for Consumers (proposal for a Directive on Representative Actions for the Protection of the Collective Interests of Consumers).

The consumer protection measures in the EU between 2009 and 2018 have also evolved as a result of the judicial activity of the Court of Justice of the European Union. While those are not, strictly speaking, legislative actions, the judgements of the Court of Justice do have a deep impact on the content of EU law. Therefore, it is important to keep track of the advancement of CJEU case-law, because it complements the legislative policy of the EU.

### 2.1.3. Indirect actions

The period between 2009 and 2018 witnessed a dramatic (and ongoing) technological change that has been exerting a profound impact on almost every aspect of the European economy and society. This process has rightly provoked a reaction from the EU, which spotted an opportunity to use these technological developments as a driver for the EU economy and so proposed a Digital Single Market Strategy. While this is not a strictly consumer protection strategy, it aims to ensure better access to online goods and services, to consumers as well as businesses.

As an aftermath of the financial crisis of 2007 – 2008, the 7<sup>th</sup> and 8<sup>th</sup> legislative periods have also witnessed a massive development of the financial market regulation. While the focus was on introducing rules that would grant a proper level of supervision and enforcement, aimed more at safeguarding the financial stability of the EU, it turned out that also in this area consumers draw substantial benefits from the market building financial instruments.

## 2.2. Instruments that directly address consumer protection

Table 2: Instruments that directly address consumer protection

Legislative Action	Consumer rights
<b>Consumer Rights Directive</b> 2011/83/EU	Right of withdrawal, Article 9 ff.
	General information duties, Article 5
	30 days delivery, Article 18
	Express consent of the consumer required to any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation, Article 22
	Trader obliged to make the consumer aware that the order that the consumer makes places the consumer under an obligation to pay, Article 8 (2)
	No extra fees for the means of payment, Article 19
	Express consent to any additional payment, Article 22
	No info-line charges, Article 21
	Contractual remedies for inertia selling, Article 27
	Opening up to regulating digital content, Article 30
	Passing of risk, Article 20
<b>Mortgage Credit Directive</b> 2014/17/EU	Information duties, Articles 8, 11, 12, 13, 14, 15
	At least 7 days to assess offers or withdraw, Article 14(6)

Legislative Action	Consumer rights
	Obligation to assess the creditworthiness of the consumer, Article 18
	Right to convert the credit agreement, Article 23
	Right to early repayment, Article 25
<b>Sea and Inland Waterway Travel</b> Regulation (EU) No 1177/2010	Right to non-discriminatory transport conditions Articles 7, 10
	Information duties, Articles 16, 22
	Re-routing, reimbursement, assistance and continuation in the event of cancellation or delay, Articles 17, 18
	Rights of disabled persons, Articles 7, 8, 10, 15
	Information and Complaints, Article 24
Regulation (EC) No 392/2009 on the <b>liability of carriers of passengers by sea in the event of accidents</b>	Compensation in the event of accidents, Article 3, which refers to Article 3 Athens Convention
<b>Bus and Coach Transport</b> Regulation (EU) No 181/2011	Right to non-discriminatory transport conditions, Articles 9, 13
	Information duties, Articles 20, 24
	Compensation and assistance in the event of accidents, Articles 7, 8
	Re-routing, reimbursement, assistance and continuation in the event of cancellation or delay, Articles 19, 21
	Rights of disabled persons, Articles 9, 10, 13, 17
	Information and Complaints, Article 26
	A wider scope of application, Articles 2(4), 3

Legislative Action	Consumer rights
<b>Package Travel</b> Directive 2015/2302/EU	Information duties, Articles 5, 6
	Transmission right, Article 9
	Right to a price reduction, Article 10(4)
	Right to withdraw from a contract in case of an alteration of the contract terms, Article 11(2)
	Right to terminate the contract, Article 12(1)
	Right of withdrawal, Article 12(5)
	Retailer responsible for the performance of the package, Article 13
	Remedies for the lack of conformity, Article 13

## 2.2.1 Consumer Rights Directive 2011

### a. General Information

Directive 2011/83/EU on Consumer Rights aims to make a contribution to the functioning of the internal market by approximating certain aspects of a Member State's laws concerning contracts between consumers and traders. It applies to all contracts concluded between a trader and a consumer, regardless of how the contract was concluded. Some contracts are excluded from the scope on account of their subject matter, for example: contracts for social services, healthcare, gambling or financial services, and contracts relating to immovable property, package holidays, timeshares, the supply of foodstuffs and beverages, and passenger transport services.

The Consumer Rights Directive fully harmonises the pre-contractual informational duties of a trader who concludes contracts in shops, as well as distance and off-premises contracts. It introduces a coherent right of withdrawal from distance and off-premises contracts and establishes detailed rules for exercising that right. It introduces a 30-day delivery rule and specific prohibitions relating to a trader's pricing policy for payment and after-sale services, as well as the organisation of the web-site.

### b. Legislative History

The Commission introduced a proposal for the Consumer Rights Directive on 8 October 2008.<sup>6</sup> It was the result of a review of the European consumer *acquis*, launched back in 2004,<sup>7</sup> and which was initially extended to cover eight consumer directives. The Green Paper concluding the review was published on 8 February 2007.<sup>8</sup>

The Commission's proposal addressed the legal fragmentation of consumer protection measures in the EU and, while it aimed at guaranteeing consumers a high level of protection in all Member States, it also sought to reduce legal obstacles in cross border trade. The proposal merged four (out of eight initially proposed) existing consumer directives (the Consumer Sales Directive, the Unfair Contract Terms Directive, the Distance Selling Directive and the Doorstep Selling Directive) and introduced a horizontal measure of full harmonisation.

The draft directive was criticised for lowering the existing level of consumer protection in some Member States, by replacing the minimum harmonisation approach with fully harmonised rules that set the protection at a lower level.<sup>9</sup> Therefore, in December 2010, the EU Council suggested limiting the scope of the future directive,<sup>10</sup> and in particular that provisions of the Consumer Rights Directive should only be applied to distance and off-premises contracts. In stark contrast, the European Parliament decided to continue working on the original proposal and aimed to replace the four directives. On 24 March 2011, the Parliament adopted its text with amendments,<sup>11</sup> in which it suggested the adoption of a mixed approach of minimum and full harmonisation (full harmonisation for areas such as

<sup>6</sup> Proposal for a Directive on consumer rights, COM(2008) 614 final.

<sup>7</sup> Council Directive 85/577/EEC, Council Directive 90/314/EEC, Council Directive 93/13/EEC, Directive 94/47/EC, Directive 97/7/EC, Directive 98/6/EC, Directive 98/27/EC, Directive 1999/44/EC.

<sup>8</sup> Commission, Green Paper on the Review of the Consumer Acquis, COM (2006) 744 final.

<sup>9</sup> Micklitz/Reich, The Commission proposal for a "Directive on consumer rights", Common Market Law Review 2009, 471 ff.; Rott/Terryn, The Proposal for a Directive on Consumer Rights: No Single Set of Rules, ZEuP 2009, 456, 459ff.; Smits, Full Harmonization of Consumer Law? A Critique of the Draft Directive on Consumer Rights, European Review of Private Law 2010, 5ff.

<sup>10</sup> Council of the European Union, General Approach, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016933%202010%20INIT>.

<sup>11</sup> European Parliament, Amendments to the proposal for a directive of the European Parliament and of the Council on consumer rights, COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)

information requirements, delivery deadlines and the right of withdrawal from distance and off-premises sales).

The European bodies reached consensus by limiting the scope of the directive and introducing certain limitations on the principle of full harmonisation. The provisions on unfair contract terms and consumer sales were nearly fully withdrawn. On 23 June 2011, the European Parliament accepted the amended draft,<sup>12</sup> and subsequently so did the Council.<sup>13</sup> The final text of the CRD was published on 22 November 2011.

### c. Level of harmonisation and scope of the Consumer Rights Directive

The Consumer policy strategy 2007 – 2013 announced a shift from minimum to full harmonisation directives,<sup>14</sup> and the Consumer Rights Directive adheres to this trend. However, while Article 4 declares that the Member States will not maintain or introduce provisions diverging from those set out in the directive, the full harmonisation effect is somehow watered down by a rather extensive list of options that the Member States have when it comes to implementing the directive. Article 4 explicitly refers to targeted harmonisation measures allowed by the directive (Member States may diverge from the standard introduced by the directive if the directive allows). The targeted harmonisation approach was the answer to the criticism received concerning the draft directive regarding undermining the standard of consumer protection in some Member States.<sup>15</sup> Indeed, the directive contains as many as eight such options for the Member States (Art. 3(4), Art. 5(3), Art. 5(4), Art. 6(7), Art. 6(8), Art. 7(4), Art. 8(6) and Art. 9(3)).

Interestingly, the Study on the Application of the Consumer Rights Directive 2011/83/EU (pp. 30-32), prepared for the EU Commission, does not see Article 5(3), Article 5(4) and Article 6(7) as an option. These articles, however, definitely offer options to the Member States, as they read:

#### Article 5

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.

#### Article 6(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.

Unlike originally intended, the Consumer Rights Directive impact is reduced to the distance and off-premises contracts. It introduces rules of horizontal effect only in relation to the general informational duties, default 30 days delivery, passing or risk, prohibition of charging consumers for means of payment in amount that exceeds the borne by the trader for it and limitation for info-line charges.

<sup>12</sup> *European Parliament*, Legislative resolution on the proposal for a directive of the European Parliament and of the Council on consumer rights, COM(2008)0614 – C6-0349/2008 – 2008/0196(COD).

<sup>13</sup> *Council of the European Union*, Press release, [http://europa.eu/rapid/press-release\\_PRES-11-359\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-11-359_en.htm?locale=en).

<sup>14</sup> *Commission*, Communication, EU Consumer Policy Strategy 2007-2013, COM(2007) 99 final, p. 7.

<sup>15</sup> *Tonner*, Die Umsetzung der Verbraucherrechtlinie – Auswirkungen der Vollharmonisierung, VuR 2014, 23, 24.

#### d. Screening Processes

The Consumer Rights Directive was subject to an evaluation carried out by the European Commission as a part of the extensive fitness check (REFIT) of consumer law. The Commission published a report<sup>16</sup> based on an external study<sup>17</sup> and consultations.<sup>18</sup> The evaluation confirmed that the Consumer Rights Directive did serve the main objectives of enhancing consumer protection and reducing regulatory fragmentation.<sup>19</sup> The provisions on pre-contractual information requirements, the right of withdrawal and the obligations on traders in the case of withdrawal were found to be most effective in protecting consumers.<sup>20</sup> At the same time, the report detected a lack of awareness by consumers and traders concerning the content and understanding of the provisions, the non-compliance by traders with regard to specific provisions (in particular the provision on the withdrawal form), and a different level of enforcement across the Member States.<sup>21</sup>

As part of the “New Deal for Consumers”, the Commission published a proposal for a directive on better enforcement and modernisation of EU consumer protection rules.<sup>22</sup> Among others,<sup>23</sup> it proposes amendments to the Consumer Rights Directive that cover extending the application of the directive to digital services for which consumers do not pay money but provide personal data, such as cloud storage, social media and email accounts.

It also introduces more transparency for consumers on online marketplaces, by adding information requirements regarding the ranking of offers, the contracting party (whether it is a trader or an individual), the application of consumer protection legislation, and which trader is responsible for ensuring consumer rights related to the contract. The proposal also aims at removing certain burdens for businesses, like lifting obligations on companies as regards the consumer’s right of withdrawal.

#### e. Consumer entitlements introduced by the Consumer Rights Directive

The right of withdrawal

##### ***The significance of the withdrawal right***

The right of withdrawal is the ultimate booster of consumer confidence in the internal market. As the internal market flourishes through the on-line availability of goods and services, the right to withdraw from a concluded contract or from an offer provides an attractive and efficient safeguard of consumer interest and confidence.

While the right of withdrawal already existed before the Consumer Rights Directive at the EU level, as both the Off-premises and the Distance Contract Directives have provided consumers with the entitlement to withdraw from a contract, the content of the rules, as well as the practice of their application created uncertainties in the internal market.

<sup>16</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final.

<sup>17</sup> Commission, Study on the application of the Consumer Rights Directive 2011/83/EU.

<sup>18</sup> Consultations carried out by the external consultant for the study (online survey and interviews with consumers, traders, national consumer and trade associations, enforcement authorities, ministries, European consumer centres); online public consultation (May - September 2016); meetings of the Fitness Check Stakeholder Consultation Group and of existing networks (such as European Consumer Consultative Group, Consumer Policy Network); discussions at the 2016 European Consumer Summit.

<sup>19</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final, p. 181 ff.

<sup>20</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final, p. 182 ff.

<sup>21</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final, p. 184.

<sup>22</sup> Proposal for a Directive regarding better enforcement and modernisation of consumer protection, COM(2018) 185.

<sup>23</sup> The Unfair Contract Terms Directive, the Price Indication Directive, the Unfair Commercial Practices Directive.



First, both directives were minimum harmonisation directives, which meant that differing levels of protection were given to consumers across the EU, on the basis of national rules transposing the directives.

Second, the directives did not set out rules that would establish how the withdrawal was to be exercised. The Consumer Rights Directive emphasises (preamble, motive 40) that the varying lengths of the withdrawal periods, both between the Member States and between the distance and off-premises contracts, cause legal uncertainty and compliance costs, and means that (preamble, motive 44) the 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 Consumer Rights Directive's solutions***

The Consumer Rights Directive has not only introduced a harmonised withdrawal period for distance and on-line contracts, but it also harmonised the right of withdrawal among the Member States, by introducing fully harmonised, very detailed rules that deal with exercising the right of withdrawal.

Article 9 of the Consumer Rights Directive provides consumers with 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 clearly indicated in the directive (but only if the consumer is informed about them in advance). If the consumer is not properly informed about the right of withdrawal, the period for withdrawal can be extended up to 12 months beyond that 14 days (Article 14). The uniform 14 days for withdrawal meant the extension of the period to withdraw for a vast majority of European consumers (the length of the period varied in various MS: 7, 10 or 14 days). Only two countries had a longer one: DE: 30 and MT: 15 days (see: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](https://ec.europa.eu/newsroom/document.cfm?doc_id=44637), p. 27).

The commencement of the withdrawal period is calculated separately for different types of contracts, due to various characteristics of such contracts. It begins on the day of concluding the contract for service contracts, contracts for the supply of public utilities and contracts for online digital content, and on the day of taking physical possession of goods (delivery) for sales contracts, subject to several special rules for: multiple goods ordered in one order and delivered separately; goods consisting of multiple lots or pieces and delivered separately; and contracts for regular delivery of goods during defined period of time.

Traders are obliged to inform consumers in a clear and comprehensible manner about the right of withdrawal. This obligation includes information on the conditions, time limit and procedures for exercising that right, as well as the model withdrawal form set out in Annex I(B), information about the costs that the consumer will have to bear in the case of withdrawing from the contract; information about the consequences of requesting the performance of a service during the withdrawal period (the consumer will have to pay the trader reasonable costs for the performed services, should he exercise the right of withdrawal); and information that, in a given contract, the consumer will not benefit from the right of withdrawal, or that the consumer might lose the right to withdraw in certain circumstances.

While traders are obliged to provide consumers with the model withdrawal form set out in Annex I(B), consumers are not obliged to use the form, and are able to withdraw from the contract also by making any other unequivocal statement. Prior to the Consumer Rights Directive, generally speaking, traders were able to use their own model declaration and, even if there was a formal notification procedure, the forms were optional (see: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](https://ec.europa.eu/newsroom/document.cfm?doc_id=44637), p. 27).

What is very important, the Consumer Rights Directive clearly establishes the consequences of the withdrawal (Article 12 termination of the obligation of the parties to perform the contract, or to conclude the contract when the offer was made by a consumer) and sets out the obligations of the parties in the event of withdrawal (of the trader: Article 13 and of the consumer: Article 14), together with the time limits for their performance (the trader has, in principle, 14 days to make the reimbursement, and the consumer has 14 days to return the goods). Ancillary contracts are automatically terminated upon withdrawal from the main contract (Article 15). For the vast majority of the Member States, the introduction of the 14-day period meant that the period for reimbursing consumers halved (for details see: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](https://ec.europa.eu/newsroom/document.cfm?doc_id=44637), p. 27).

Consumers have to bear the costs of returning the goods, unless the trader has agreed to bear them or failed to inform the consumer that the consumer has to bear them.

This solution harmonised national rules, which prior to the directive varied from country to country (see: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](https://ec.europa.eu/newsroom/document.cfm?doc_id=44637), p. 27). Consumers are also liable for the 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, unless the trader has failed to provide notice of the right of withdrawal (Article 14(2)), which means that the consumer can handle and inspect the goods in the same manner as he would be allowed to do in a shop.

When it comes to contracts for the provision of services, if the consumer wants the performance to begin during the withdrawal period, the trader may require that the consumer make an express request. However, even if the provision of service has begun, the consumer is still able to withdraw from the contract, but must pay the trader an amount in proportion to what has been provided on the basis of the total price agreed. The consumer loses the right of withdrawal after the service has been fully performed, where the performance began 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 (Article 16(a)).

The Consumer Rights Directive also systematises the technicalities of calculating the period, which is of a crucial importance from the point of view of exercising the right of withdrawal. All the periods contained in the Consumer Rights Directive are expressed in calendar days, and Council Regulation No 1182/71 applies accordingly (recital 41 preamble).

There are several aspects of the withdrawal right that the Consumer Rights Directive does not deal with, leaving them for the Member States to regulate, for example: the enforcement of the consumer's liability for the diminished value of the goods, who bears the risk of accidental damage or loss when returning the goods after the consumer withdraws from the contract, or rules on the termination of the ancillary contracts.

Article 16 of the directive sets out a rather extensive list of exceptions from the right to withdraw (13 contracts), which include: goods made to the consumer's specifications or clearly personalised goods with specific characteristics, goods liable to deteriorate or expire rapidly, contracts with a specific date or period of performance, the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications; or contracts concluded at a public auction;

#### General information duties

The Consumer Rights Directive took a horizontal approach to the issue of the pre-contractual information that the trader is obliged to provide to consumers. The obligation extends to contracts concluded in shops (Article 5) as well as to the distance and off-premises contracts (Article 6). This solution not only resulted in a formal increase in consumer protection level in all the Member States

(see: [ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](https://ec.europa.eu/newsroom/document.cfm?doc_id=44637), p. 28), but actually equips consumers, in particular those, who conclude contracts on-line, with practical tools to enforce their rights.

While consumer protection through information has been subject to criticism, as its overall effectiveness has been questioned, the Consumer Rights Directive proves that protection through information can also be pursued efficiently by consumers. This not only relates to making a more informed choice (which will be particularly effective in the context of analytical tools available online, increasing the effectiveness of the protection-through-information policy), but also specific entitlements that the Consumer Rights Directive offer to consumers in the event of a trader's failure to inform the consumer properly. For distance and off-premises contracts:

- If the trader failed to provide information about the withdrawal period means the extension of the withdrawal period by up to 12 months from the end of the initial withdrawal period (Article 10(1));
- If the trader failed to inform the consumer about the withdrawal right, the consumer is not liable for any diminished value of the goods resulting from handling the goods other than what is necessary to establish the nature, the characteristic and functioning of the goods (Article 13(2));
- If the trader failed to inform the consumer that exercising the withdrawal right just after making a request for commencement of the service performance may require the consumer to pay reasonable costs for the service, then the consumer is not obliged to pay these costs (Article 14(4)(a)(i));
- If the trader failed to inform the consumer that it is the consumer who must bear the costs of returning the goods in the case of exercising the right of withdrawal – the trader must bear the cost himself (Article 14(1)).

### 30 days delivery

Article 18 of the Consumer Rights Directive introduced a default rule whereby the trader must deliver the goods to the consumer as soon as possible, and not later than 30 days from the conclusion of the contract. If the trader has failed to deliver, the consumer will be entitled to set an additional period of time in which delivery must be made or the consumer will terminate the contract.

The obligation to set an additional period does not arise (i.e. the consumer is entitled to terminate the contract immediately) if 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. Upon termination, the trader is obliged to reimburse all sums paid under the contract, without undue delay.

Prior to the directive, only a minority of EU countries already had a delivery period limit of 30 days, while most Member States had no a specific time period for that established in law. In some Member States, the delivery period, unless specified otherwise in the contractual agreement between the parties, was required to be within a "reasonable" time period.<sup>24</sup>

<sup>24</sup> Commission, Study on the application of Directive 2011/83/EU on consumer rights, p. 28.

## **Knowing what you pay for**

The Consumer Rights Directive contains several rules aimed at making sure that consumers' financial interests are properly protected, by securing that the consumer makes a conscious decision to conclude a contract against pecuniary remuneration, is not 'tricked' into additional offers that necessitate extra payments, and addressing aggressive pricing policies of traders.

### **Order with an obligation to pay**

In relation to distance contracts, the Consumer Rights Directive establishes a rule (Article 8.2) requiring the specific organisation of a website designed to conclude a contract with consumers, in order to make sure that consumers know when they enter into a contract against remuneration. It is therefore the duty of the trader to ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. The directive specifies further that where placing an order entails activating a button or a similar function, the button or similar function must be labelled in an easily legible manner only with the words 'order with an 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 is not bound by the contract or order.

### **No extra fees for the means of payment**

Traders are prohibited (Article 19) from charging consumers for using a given means of payment any fees that exceed the cost borne by the trader for the use of such means. This is novel provision for a majority of the Member States.<sup>25</sup>

### **Additional payments**

Article 22 introduces a ban on pre-ticked boxes, which means that, before the consumer is bound by a contract or offer, the trader must 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 that the consumer is required to reject in order to avoid the additional payment, the consumer will be entitled to reimbursement of this payment. This is a new solution for 26 Member States (DE and SE already had this prohibition prior to the directive<sup>26</sup>).

### **Info-line charges**

The Consumer Rights Directive also introduces a ban on charging over the basic standard telephone rate (Article 21) for using telephone lines that the trader operates for the purpose of contacting him by telephone in relation to a concluded contract. This also is a new requirement in 26 Member States (in EL and HU, the previous laws required that consumers be informed about any additional costs of communication over and above the basic rate, though such charges were still allowed<sup>27</sup>).

### **Inertia selling**

The Consumer Rights Directive has exempted consumers from the obligation to provide any consideration in cases of an unsolicited supply of goods, water, gas, electricity, district heating or digital content or the unsolicited provision of services.

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<sup>25</sup> Commission, Study on the application of Directive 2011/83/EU on consumer rights, p. 28.

<sup>26</sup> Commission, Study on the application of Directive 2011/83/EU on consumer rights, p. 28.

<sup>27</sup> Commission, Study on the application of Directive 2011/83/EU on consumer rights, p. 28.

This prohibition already existed in Article 5(5) and point 29 of Annex I of the Unfair Commercial Practices Directive and in Article 9 of the Distance Contracts Directive.

## **Other consumer rights**

### **Opening up to regulating digital content**

Article 30 obligates the Commission to submit a report on the application of the Directive by 13 December 2016. The report shall especially focus on an evaluation of the provisions regarding digital content including the right of withdrawal. As already stated above, the Commission published this report in 2017<sup>28</sup> which was followed by a proposal for a directive on better enforcement and modernisation of EU consumer protection rules that also includes amendments to the CRD regarding digital content.<sup>29</sup>

### **Passing of risk**

The Consumer Rights Directive provides protection of the consumer against any risk of loss of or damage to the goods occurring before he has acquired the physical possession of the goods (Art. 20). 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.

## **2.2.1. Mortgage Credit Directive 2014**

### **a. General Information**

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property lays down a common framework for agreements covering consumer credit secured by a mortgage, or otherwise relating to a residential immovable property. It aims to create an efficient single mortgage market for the benefit of consumers, and establishes conditions to ensure a high level of professionalism on the part of lenders and credit intermediaries. The directive applies to credit agreements secured by a mortgage or by another comparable security commonly used in a Member State on residential immovable property, or secured by a right related to residential immovable property, as well as to credit agreements the purpose of which is to acquire or retain property rights in land, or in an existing or planned building. The term 'credit agreement' is defined as an agreement with a consumer whereby a creditor grants, or promises to grant, credit falling within the scope of the directive in the form of a deferred payment, loan or other similar financial accommodation.

The Mortgage Credit Directive strives at enhancing consumer protection and creating a genuine internal market by introducing (among other things) the following requirements:

- Obligation of the creditor to assess the creditworthiness of the consumer;
- Pre-contractual information duties of the lender (personalised information to enable the consumer to compare credit available on the market and make an informed decision; general information about credit agreements;
- At least seven days for the consumer to consider the implications of an agreement, as a period of reflection before the conclusion of the agreement, or as a period of withdrawal;
- Financial education for consumers;

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<sup>28</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final.

<sup>29</sup> Commission, Study on the application of Directive 2011/83/EU on consumer rights, p. 28.

- Consumer's right to repay the credit early, either fully or partially.

## b. Legislative History

Building on the ongoing discussions about a uniform regulation of the market for residential mortgage loans and consumer protection,<sup>30</sup> in 2001 the Commission issued a recommendation on pre-contractual information that lenders who offer home loans to consumers must give,<sup>31</sup> together with a European agreement on a voluntary code of conduct on pre-contractual information for home loans.<sup>32</sup> The focal point of these soft law initiatives was the European Standardised Information Sheet.

However, after two years, a report<sup>33</sup> established that the Code of Conduct did not efficiently guarantee similar standards in Europe. The countries where the Code of Conduct had been implemented represented only 58 % of the European population, and the obligations of the Code of Conduct were not always totally fulfilled.

The Commission undertook a comprehensive review of the EU residential mortgage markets and adopted a White Paper in 2007 presenting a package of measures to improve the efficiency and the competitiveness of EU residential mortgage markets.<sup>34</sup> The White Paper identified as key issues to be addressed: the pre-contractual information, the Annual Percentage Rate of Charge, responsible lending and early repayment. Against this background, and also in the wake of the financial crisis, several consultations and studies were carried out by European bodies.<sup>35</sup> In March 2011, the Commission introduced a proposal for a Directive on Mortgage Credits<sup>36</sup> focusing on ensuring financial market stability and increasing consumer protection. The core aspect of the rules on consumer credit agreements was Chapter III regulating information and practices preliminary to the conclusion of a credit agreement.

Before agreement among the Commission, the Council and the European Parliament was reached, the initial proposal of the Mortgage Credit Directive was amended radically, particularly by proposals introduced by the European Parliament.<sup>37</sup> The number of exceptions from the scope of application was extended and the requirements on the conduct of business obligations were reduced. The changes also concerned provisions on the creditworthiness assessment and the suitability of the credit product for the consumer, on early repayment, on credit intermediaries, on the annual percentage rate of charge formula, on financial literacy and education, on product tying and bundling, and on information requirements.

Regarding consumer protection, the final text of the directive has a narrower scope of application and a lower level of protection than the Commission's initial proposal.

<sup>30</sup> As outlined in Schäfer, Wohnimmobilienkreditrichtlinie, Geschichte und Umsetzung im Verbraucherdarlehensrecht, VuR 2014, 207 f.

<sup>31</sup> Commission Recommendation of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2001.069.01.0025.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2001.069.01.0025.01.ENG)

<sup>32</sup> European Agreement on a voluntary code of conduct of pre-contractual information for home loans, available at [http://ec.europa.eu/internal\\_market/finances-retail/docs/home-loans/agreement\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/home-loans/agreement_en.pdf)

<sup>33</sup> Monitoring the uptake and the effectiveness of the Voluntary Code of Conduct on Pre-contractual Information for Home Loans, available at [http://ec.europa.eu/internal\\_market/finances-retail/docs/home-loans/home-loans-final-report\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/home-loans/home-loans-final-report_en.pdf)

<sup>34</sup> Commission, White Paper on the Integration of EU Mortgage Credit Markets, COM(2007) 807 final.

<sup>35</sup> Proposal for a Directive on credit agreements relating to residential property, COM(2011) 142 final, Impact Assessment.

<sup>36</sup> Proposal for a Directive on credit agreements relating to residential property, COM(2011) 142 final.

<sup>37</sup> European Parliament, Report on the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property, A7-0202/2012



### c. Screening Processes

According to Article 44, the Commission must undertake a review of the Mortgage Credit Directive by 21 March 2019.

### d. Consumer entitlements introduced by the Mortgage Credit Directive

#### Introduction

Purchasing real estate is the most important act in the life of the average consumer.<sup>38</sup> The Mortgage Credit Directive lays down a common framework concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property. It aims to ensure that all consumers who take out a mortgage to purchase a property are adequately informed and protected against the risks associated with such transactions. It also promotes financial stability by ensuring that the mortgage credit market and its participants operate in a responsible manner.

The Mortgage Credit Directive introduces provisions combining the minimum harmonisation principle as a general rule with a few (targeted) full harmonisation provisions such as those on pre-contractual information contained in the European Standardised Information Sheet (ESIS).

#### Information duties

The Mortgage Credit Directive establishes guidelines on marketing and advertising and provides obligations regarding pre-contractual and general information as well as requirements regarding credit intermediaries and the borrowing rate information. The information must be provided to consumers free of charge (Article 8).

To protect consumers against unfair or misleading advertising practices, and to enable them to compare advertisements, Article 12 sets out the obligation to include standard information subject to specific requirements in any advertising concerning credit agreements that indicate an interest rate or any figures relating to the cost of the credit to the consumer.

Subject to the full harmonisation principle (Article 2 para 2), the creditor and, where applicable, the credit intermediary or appointed representative have to provide the consumer with personalised information needed at least in good time before the consumer is bound by any credit agreement or offer. For this, the information must be provided in the ESIS (Article 14(1)(2)).

The ESIS clearly explains the borrowing rate and how it is calculated, as well as the possible risks linked to the variable rate loans. Hence, the consumer will be able to compare credit available on the market, assess the implications and make an informed decision on whether to conclude a credit agreement.

In addition, according to Article 13, lenders must ensure the permanent availability of clear and comprehensible general information about credit agreements.

#### At least 7 days to assess offers or withdraw

Article 14(6) sets out that the consumer has at least seven days in which to compare different offers, assess their implications and make an informed decision. It is up to the Member States to legally design this time period as a period of reflection prior to the conclusion of a contract, or as a period for exercising a right of withdrawal. These two options may also be combined. In addition, the Member States can set up a longer time period.

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<sup>38</sup> *Commission*, Report on the application of Directive 87/102 on consumer credit, COM (95) 117 final.

If a Member State decides to establish a reflection period prior to the conclusion of a contract, the offer is binding for the creditor for the duration of this period and the consumer can accept the offer at any time during the period unless the Member State has decided to stipulate that the consumer cannot accept the offer for a certain period.

### **Obligation to assess the creditworthiness of the consumer**

Creditors will have to conduct a thorough, documented creditworthiness assessment before granting a credit, and then only if the assessment indicates that the consumer is likely to meet the credit obligations (Article 18).

### **Right to convert the credit agreement**

If the credit agreement relates to a foreign currency loan, the consumer has the right to convert the credit agreement into an alternative currency, unless the Member State establishes other arrangements to limit the exchange rate risk the consumer is exposed to (Article 23).

### **Right to early repayment**

The consumer has the right to fully or partially discharge his obligations prior to the expiry of the credit agreement (Article 25). This entails the entitlement to reduce the total cost of the credit for the consumer by reducing the interest and the cost for the remaining duration of the contract.

The Member States can, however, provide that the exercise of this right is subject to certain conditions, which may include time limitations on the exercise of the right or restrictions with regard to the circumstances under which the right may be exercised, or to the existence of a legitimate interest.

The right of early repayment allows borrowers more flexibility, for example to consolidate debts through a new mortgage, or sell their property because of a change of circumstances.

## **2.2.2. Sea and Inland Waterway Travel Regulation 2010 and Bus and Coach Transport Regulation 2011**

### **a. General Information**

Regulation (EU) No 1177/2010 of 24 November 2010 aims to ensure the basic protection of passengers who travel by sea and inland waterways using passenger services or cruises. It became applicable on 18 December 2012. The regulation establishes rules on the non-discrimination between passengers with regard to the transport conditions offered by carriers, and non-discrimination and assistance for disabled persons and persons with reduced mobility. In addition, it defines the rights of passengers in cases of cancellation or delay, sets out the minimum information standard to be provided to the passengers and provides general rules on handling complaints and on enforcement.

Moreover, Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents became applicable in the EU on 31 December 2012. It incorporates certain provisions of the 1974 Athens Convention (as amended by the 2002 Protocol) relating to the carriage of passengers and their luggage by sea. The Regulation covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment, in the event of accidents.

Regulation (EU) No 181/2011 of 16 February 2011 aims to improve passengers' rights in the bus and coach transport sector, including the rights of disabled people and persons with reduced mobility. It became applicable on 1 March 2013. The regulation establishes rules on the non-discrimination between passengers with regard to the transport conditions offered by carriers and non-discrimination and assistance for disabled persons and persons with reduced mobility.



It also defines the rights of passengers in cases of cancellation or delay, or in the event of accidents arising out of the use of a bus or coach resulting in death or personal injury, or loss of or damage to luggage. The regulation also sets a minimum information standard to be provided to the passengers and provides for general rules on handling complaints and on enforcement.

#### b. Legislative History

On 4 December 2008, the Commission introduced two legislative proposals regarding the rights of maritime, bus and coach passengers. The proposals sought to build on the rights gained by the air and rail travellers under existing EU legislation, namely the Rail Passengers Regulation (EU) No 1371/2007 and the Air Travel Regulations (EU) No 261/2004, (EU) No 1107/2006, by extending similar rights to other means of transport, while taking into account the specific nature of the sectors.

The purpose of the proposal for a regulation on the rights of maritime passengers was to establish the rights of domestic and international maritime passengers, including those who are disabled or persons with reduced mobility, in order to improve the attractiveness of and confidence in maritime transport. The proposal also aimed to achieve a level playing field for carriers from different Member States.

In their positions at the first reading, the European Parliament and the Council disagreed on a number of issues, especially regarding the scope, assistance, re-routing, reimbursement and compensation. In the second reading decision, the European Parliament adopted a position that was approved by the Council on 11 October 2010. The final act was signed on 24 November 2011.

Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents was proposed on 23 November 2005 and adopted by the Council, following an agreement with the Parliament at a third reading of the co-decision procedure. The final act was signed on 23 April 2009. The Commission's proposal to extend the application of the Athens Convention to the international and domestic carriage by inland waterways was rejected by the Council and the Parliament, since both institutions considered that the sector had specific features.

The aim of the proposal for a regulation on the rights of bus and coach passengers was to establish EU-wide rights for the protection of passengers and to create a level playing field between carriers from different member states in the bus and coach transport sector, which was recorded steady growth. The Council adopted its position at first reading on 11 March 2010 and modified the core provisions contained in both the Commission's proposal and the EP's position. The European Parliament concluded its second reading on 6 July 2010 and adopted 50 amendments to the Council's common position. The main issues resolved around the scope and the timetable of application, the rules on liability, damages and assistance, the rights of disabled persons and persons with reduced mobility, passenger rights in the event of cancellation or delays, and the complaints system.

The issue of scope could not be solved in trilogue meetings, but an overall agreement was reached in the Conciliation Committee on 1 December 2010. With regard to the scope, the compromise reached a distance of 250 km of the travel service, whereas the initial negotiating position of the Council foresaw 500 km. In addition, the final compromise included twelve basic rights of passengers independent of distance, whereas the initial Council positions foresaw only three such rights. The Council's and the EP's decisions in the third readings were made respectively on 31 January and 15 February 2011. The final act was signed on 16 February 2011.

### c. Screening Processes

As required by Article 32 of the Bus and Coach Regulation and Article 29 of the Sea and Waterways Regulation, the Commission submitted reports to the European Parliament and the Council on the operation and effects of the regulations.<sup>39</sup> The Commission came to the conclusion that there is no need for amendments to the regulations, but introduced actions to improve enforcement and to ensure the uniform application of the regulations.

### d. Consumer entitlements introduced by the Sea and Waterway Travel Regulation and the Bus and Coach Transport Regulation

#### Introduction

The passenger rights established in Regulation (EU) No 1177/2010 and (EU) No 181/2011 go hand in hand with the Rail Passengers Regulation (EU) No 1371/2007 and the Air Travel Regulations (EU) No 261/2004, (EU) No 1107/2006. Together, they form a full set of passenger rights guaranteed across all forms of transport when travelling in the EU.

#### Right to non-discriminatory transport conditions

In addition to certain exceptional cases that require special conditions, carriers, travel agents and tour operators cannot refuse to accept a reservation, to issue or otherwise provide a ticket or take on board persons on the grounds of disability or of reduced mobility as such.

Reservations and tickets must be offered at no additional cost under the same conditions that apply to all other passengers (Article 9 Bus and Coach Regulation, Article 7 Sea and Waterway Regulation). Disabled persons and persons with reduced mobility enjoy free of charge assistance at designated terminals and on board buses and coaches (Article 13 Bus and Coach Regulation), as well as in ports and on board ships (Article 10 Sea and Waterway Regulation).

#### Information duties

All passengers have the right to adequate information throughout their travel (Article 22 Sea and Waterway Regulation, Article 24 Bus and Coach Regulation). These include the right to be informed about passengers' rights and the contact details of the national enforcement bodies. In the event of cancellation or delays, passengers have to be informed no later than 30 minutes after the scheduled time of departure (Article 16 Sea and Waterway Regulation, Article 20 Bus and Coach Regulation).

#### Compensation and assistance in the event of accidents

In the event of an accident, passengers are entitled to compensation for death or personal injury, as well as for the loss of or damage to luggage (Article 3 Regulation (EC) No 392/2009, Article 7 Bus and Coach Regulation).

In addition, the Bus and Coach Regulation imposes an obligation on the carrier to provide reasonable and proportionate assistance covering the immediate practical needs of passengers travelling on long-distance regular services following the accident. Such assistance should include, where necessary, accommodation, food, clothes, transport and the facilitation of first aid (Article 8 Bus and Coach Regulation).

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<sup>39</sup> Commission, Report on the Application of Regulation (EU) No 181/2011, COM(2016) 619 final; Commission, Report on the application of the application of Regulation (EU) No 1177/2010, COM (2016) 274 final.

### Re-routing, reimbursement, assistance and continuation in the event of cancellation or delay

Where a journey is cancelled or delayed, carriers must offer a choice between re-routing or reimbursement (Article 18 Sea and Waterway Regulation, Article 19 Bus and Coach Regulation). Maritime passengers have the right to assistance and to rerouting or reimbursement when departure is delayed for more than 90 minutes; in this case, the carrier has to provide snacks, meals or refreshments and, where necessary, accommodation up to a cost of EUR 80 per night for a maximum of three nights (Articles 17 and 18 Sea and Waterway Regulation). The same applies to road travel, when the journey has a scheduled duration of more than three hours. In this case, hotel accommodation needs to be provided for up to two nights (Article 21 Bus and Coach Regulation). In the event of a breakdown of the vehicle during the journey, the carrier has to ensure the continuation of the journey with another vehicle or transport to a suitable waiting point (Article 19(3) Bus and Coach Regulation).

### Rights of disabled persons

In addition to the general passenger rights, the regulation establishes a set of rights for disabled persons and persons with reduced mobility in order to allow them to enjoy the same possibilities to travel as other citizens.

Disabled persons and persons with reduced mobility have the right of access to transport at no additional costs for reservations and tickets. Carriers, travel agents and tour operators are not allowed to refuse to accept a reservation from, providing a ticket to, taking on board or embarking passengers on the grounds of their disability or reduced mobility (Article 9 Bus and Coach Regulation, Article 7 Sea and Waterway Regulation). Exceptions may only be made under strict requirements, such as the compliance with safety requirements established by international, Union or national law (Article 10 Bus and Coach Regulation, Article 8 Sea and Waterway Regulation).

Disabled persons and persons with reduced mobility have the right to assistance at no cost (Article 13 Bus and Coach Regulation, Article 10 Sea and Waterway Regulation).

Carriers and terminal operators are liable for the loss of or damage to mobility equipment (wheelchair or other assistive devices). They have to pay compensation corresponding to the replacement costs or the costs of repair. If necessary, the mobility equipment has to be replaced temporarily (Article 17 Bus and Coach Regulation, Article 15 Sea and Waterway Regulation).

### Information and Complaints

For the rights and obligations covered by the regulations, a complaint-handling mechanism must be set up by the carriers and terminal operators. Passengers must be provided with appropriate and comprehensible information regarding their passenger rights at the latest on departure (Article 24 Sea and Waterway Regulation, Article 26 Bus and Coach Regulation).

## 2.2.3. The New Package Travel Directive 2015

### a. General Information

Directive 2015/2302/EU on package travel and linked travel arrangements updated the previously applicable EU rules on package holidays by adjusting them to developments on the travel market in the digital era. It takes into account the development of the internet as an increasingly important medium for selling travel services and aims to enhance transparency and increase legal certainty. This directive is also based on a full harmonisation approach.

The Package Travel Directive applies to packages offered for sale or sold by traders or travellers and to linked travel arrangements facilitated by traders for travellers. It covers packages where two or more

travel services are purchased either from the same trader on a website or from a high street travel agent under one contract; “click-through” sales where two or more services are purchased from multiple online traders under separate contracts, but where the traveller’s name, email address and payment details are transferred directly between traders within 24 hours; and linked travel arrangements where at least two different travel services are sold by a trader facilitating the travel arrangements for the purpose of the same trip or holiday.

## b. Legislative History

On 9 July 2013, the Commission introduced a proposal for a directive on package travel and assisted travel arrangements.<sup>40</sup> The proposal was based on a review of the European consumer *acquis* that, among other things, encompassed Directive 90/314/EEC on package travel, package holidays and package tours. The proposal’s aim was to modernise the rules on packages and other combinations of travel services, which was seen as necessary in light of the development of internet distribution and the liberalisation of the airline sector. The European Parliament adopted a considerable number of amendments in the first reading on 12 March 2014.<sup>41</sup> It narrowed the scope and definitions, supplemented pre-contractual information duties and formal requirements, and amended the rules on changes to the package, price reductions and price increases, termination, insolvency-protection, as well as no-fault liability, mostly in favour of the traveller.

Consent was achieved following trilogue meetings on 21 May 2015. The European Parliament accepted the draft in the second reading on 27 October 2015. The final version of the Package Travel Directive was enacted on 25 November 2015.

To avoid confusion with the definition of the term ‘consumer’ used in other Union legislation, the new Package Travel Directive introduces the term ‘traveller’ as the person protected. It encompasses business travellers, including members of liberal professions, the self-employed or other individuals, provided they do not make travel arrangements on the basis of a general agreement.

In contrast to the 1990 Directive, the new Package Travel Directive follows a full harmonisation approach. The broader scope covers linked travel arrangements, where at least two different travel services are sold by a trader facilitating the travel arrangements for the purpose of the same trip or holiday, and “click-through” sales where two or more services are purchased from multiple online traders under separate contracts but where traveller’s name, email address and payment details are transferred directly between traders within 24 hours.

On top of that, also dynamic packaging falls within the scope of application (which complies with CJEU judgement *Club-Tour*<sup>42</sup>). In the new directive, the pre-contractual and contractual information duties have been specified. For the first time, the directive imposes information duties not only on the tour operator, but also on the retailers. In addition, the traveller now has the right to a price reduction in the event of a violation of a contractual duty of the tour operator, even if the latter is not at fault. This is in contrast to the Commission’s proposal that introduced the right to a price reduction combined with a reversal of the burden of proof rule. Against the background of the full harmonisation principle, this would have led to a reduction in consumer protection in those Member States that have based rules regarding package travel on strict liability.<sup>43</sup>

<sup>40</sup> Proposal for a Directive on package travel, COM(2013) 512 final.

<sup>41</sup> *European Parliament*, Legislative resolution on the proposal for a Directive on package travel and assisted travel arrangements, COM(2013)0512 –C7-0215/2013 –2013/0246(COD).

<sup>42</sup> Case C-400/00.

<sup>43</sup> For example, Germany, ex §§ 651c – 651e BGB.

### c. Screening Processes

According to Article 26, the Commission must submit a general report on the application of the Package Travel Directive to the European Parliament and to the Council by 1 January 2021.

### d. Consumer entitlements introduced by the New Package Travel Directive 2015

#### Introduction

Since the old Package Travel Directive<sup>44</sup> entered into force in 1990, the forms of booking package travel have dramatically changed as a result of a rapid technological progress as well as the development of new business models. Following a targeted harmonisation approach, the New Package Travel Directive<sup>45</sup> aims to provide appropriate legislative answers to these changes, and to adapt the European legal framework to the modern requirements, particularly given that packages and elements of a travel are booked on the internet. Not only does the directive extend the scope of protection (in terms of the people who are protected, but also types of contracts and contract arrangements), but also provides consumers with a number of new rights, seeking to achieve a high and uniform level of protection in the field of contracts between travellers and traders relating to package travel and linked travel arrangements.<sup>46</sup> In principle, the directive distinguishes between rights of the traveller before and after the start of the package.

#### Wider scope of application

##### The consumer is now a traveller

While the old Package Travel Directive understood consumers to whom it offered protection in a slightly wider way than other directives (according to Article 2(4), a 'consumer' meant the person who took or agreed to take the package [the 'principal contractor'], or any person on whose behalf the principal contractor agreed to purchase the package [the 'other beneficiaries'] or any person to whom the principal contractor or any of the other beneficiaries transferred the package [a 'transferee']], the new Package Travel Directive takes a new, even more extensive approach. It refrains from referring the term 'consumer' (in order to avoid confusion with the definition of the term 'consumer' used in other Union legislation) and instead addresses its provisions to 'travellers'.

A traveller means any person who is seeking to conclude a contract or is entitled to travel on the basis of a contract concluded, within the scope of the directive. Motive 7 of the preamble explains further that the majority of travellers buying packages or linked travel arrangements are consumers within the meaning of Union consumer law. At the same time, it is not always easy to distinguish between consumers and representatives of small businesses or professionals who book trips related to their business or profession through the same booking channels as consumers. Such travellers often require a similar level of protection. In contrast, there are companies or organisations that make travel arrangements on the basis of a general agreement, often concluded for numerous travel arrangements for a specified period, for instance with a travel agency. The latter type of travel arrangement does not require the level of protection designed for consumers. Therefore, this directive should apply to business travellers, including members of liberal professions, or self-employed or other individuals, where they do not make travel arrangements on the basis of a general agreement.

<sup>44</sup> Council Directive 90/314/EEC on package travel, package holidays and package tours.

<sup>45</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked package travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

<sup>46</sup> Article 1 of the New Package Travel Directive.

## **New meaning of package**

The New Package Travel Directive also provides a new definition for the term ‘package’, covering more travel arrangements and thus increasing consumer protection. The directive does not restrict itself to one single definition, but instead its Article 3(2) lists six different types of possible arrangements that are to be understood as a ‘package’. All of these definitions have in common that they require a combination of at least two different types of travel services for the purpose of the same trip or holiday. In accordance with the case-law of the CJEU, dynamic packaging is now covered by the scope of the directive, set out in paragraph 2(a). On top of that, it is worth noting the extent of the definitions in paragraph 2(b)(i) and (ii): the European legislator set aside the requirement of an inclusive price, and so it suffices that the package is offered, sold or charged at an inclusive or total price. The definition in paragraph 2(b)(iv) seeks to cover holiday gift boxes, where the exact content of the travel is not clear yet at the time of concluding the contract. Paragraph 2(b)(v) covers ‘click-through’ sales where two or more services are purchased from multiple online traders under separate contracts but where the traveller’s name, e-mail address and payment details are transferred directly between traders within 24 hours.

The definition of a package in every case builds upon the term ‘travel service’. This term has also been redefined and expanded in Article 3(1) of the New Package Travel Directive, and it is now clear that it covers the rental of cars and other motor vehicles as a separate category.

The European legislator implemented a new category of travel combination with the term ‘linked travel arrangements’ (‘LTA’s). With this, the directive seeks to capture all combinations of travel services where the arrangement falls outside the definition of a package, in order to provide at least some financial security to travellers. LTA’s have the function of a safety net. As established by the directive (Article 2(5)), they must consist of at least two different types of travel services purchased for the same trip or holiday but not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:

- on the occasion of a single visit or contact with this point of sale, the separate payment of each travel service by travellers;
- in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded no more than 24 hours after the confirmation of the booking of the first travel service.

A trader providing linked travel arrangements has to give a notice to the traveller before he concludes a contract leading to the creation of a linked travel arrangement.

If he does not comply with these obligations, the consequences are harsh, as the linked travel arrangement is then treated as a package by means of Article 19.

At the same time, the new Package Travel Directive expressly excludes from its scope of application, business travel, packages offered on a one-off basis and on a non-for-profit basis, and packages not exceeding a period of 24 hours (Article 2).

## **Rights before the start of package:**

### **Information duties**

The rules on pre-contractual information in Articles 5 and 6 of the new directive have been broadened and specified in comparison to the directive of 1990. The directive imposes information duties not only on the tour operator, but also on the retailers. In addition, it introduces eight standard information forms which either apply to travel packages or to linked travel agreements.



**Transmission right**

The right to transfer the contract to another person already existed under the old Package Travel Directive (Article 4 (3)). It is confirmed in Article 9 of the new Package Travel Directive, which declares that the traveller has the right to transfer the contract to another person who satisfies all the conditions applicable to the package, with a reasonable notice. The new directive specifies further that notice given at least seven days before the start of the package is in any event deemed to be reasonable.

The old Package Travel Directive provided the consumer the possibility to transfer, but only if the consumer was 'unable to proceed with the package travel' (Article 4(3)). This directive also did not stipulate what is considered to be reasonable notice.

**Right to a price reduction**

While the new Package Travel Directive allows for an increase of the price of the package travel contract, it sets out the reasons that might justify the increase (Article 10(1)). Hence, the increase is allowed only as a direct result of changes in: the price of the carriage of passengers resulting from the cost of fuel or other power sources; the level of taxes or fees on the travel services included in the contract imposed by third parties not directly involved in the performance of the package; or the exchange rates relevant to the package. However, the price may be increased only if the contract expressly reserves that possibility, and it states that the traveller is entitled to a price reduction corresponding to any decrease in the costs that occurs after the conclusion of the contract but before the start of the package (Article 10 (4)). This is a novelty, since while the old package did allow for an increase in price (Article 4 (4)), it did not balance it with the consumer's entitlement to have the price decreased.

**Right to withdraw from a contract in case of an alteration of the contract terms**

Article 11(2) of the Package Travel Directive gives the traveller the right to terminate the contract without paying a termination fee. This right arises if, before the start of the package (1) the organiser significantly alters any of the main characteristics of the travel services, (2) cannot fulfil the special requirements of the traveller that the organiser previously accepted, or (3) proposes to increase the price of the package by more than 8 %. If the traveller does not want to accept the proposed change, he may terminate the contract, within a reasonable period specified by the organiser. If the traveller terminates the package travel contract, the traveller may accept a substitute package of an equivalent or a higher quality, where offered by the organiser.

The old Package Travel Directive also offered the right to terminate the contract in the event of a significant alteration of the essential contract terms (Article 4(5)).

The right to termination arose in similar circumstances, though there was no precise indication of the percentage by which the price would have to be increased in order to allow for the termination. In addition, the consumer had a choice between withdrawing from the contract without penalty or accepting a rider to a contract specifying the alterations made and their impact on the price.

**Right to terminate the contract**

Unlike the old Package Travel Directive, the new one (Article 12(1)) gives the traveller the right to terminate the package travel contract at any time before the start of the package. The traveller may be required to pay an appropriate and justifiable termination fee to the organiser, unless, as specified in paragraph 2, there are unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity, which significantly affect the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of the termination



of the package travel contract under this paragraph, the traveller is entitled to a full refund of any payments made for the package but is not entitled to additional compensation.

Under the old Package Travel Directive, the consumer was merely entitled to transfer the contract to another (appropriate) person before the start of the package, and he would be jointly and severally liable with this person to the organiser or retailer for the payment of the balance due (this right is retained under the new directive).

### **Right of withdrawal**

The new Package Travel Directive gives the Member States a possibility (Article 12(5)) in relation to off-premises contracts, to allot the traveller with the right to withdraw from the package travel contract within a period of 14 days without giving any reason. This possibility means that the traveller does not have to pay a termination fee as provided for in Article 10(1), in the event of withdrawing from the contract. This entitlement was not expressly stipulated in the previous directive. However, since the directive had a minimum character, the Member States were able to adopt or retain provisions granting consumers a higher level of protection.

### **Rights after the start of package:**

#### **Retailer responsible for the performance of the package**

One of the most significant changes introduced by the new Package Travel Directive is the liability rules for the performance of the package travel. The rules relate to both: the person liable for the performance, as well as the travellers' entitlements.

Article 13 establishes that the organiser is responsible for the performance of the travel services included in the package travel contract, regardless of whether those services are to be performed by the organiser or by other travel service providers. Further, the directive allows Member States to maintain or introduce in their national law provisions under which the retailer is also responsible for the performance of the package.

The old directive gave Member States the discretion to determine whether retailers, organisers or both retailers and organisers are liable for the proper performance of a package. That flexibility, as explained by motive 23 of the preamble, led to ambiguity in some Member States as to which trader is liable for the performance of the relevant travel services. Therefore, the directive clarifies that organisers are responsible for the performance of the travel services included in the package travel contract, unless national law provides that both the organiser and the retailer are liable (motive 23).

#### **Remedies for the lack of conformity**

The new Package Travel Directive introduces a system of remedies available to travellers in the event of any non-conformity in the performance of the package travel contract. The remedial system is clearly based on the remedial system available to consumers in cases of non-conformity of consumer goods (as regulated in the Consumer Sales Directive). The lack of conformity means, according to Article 3(13), a failure to perform or improper performance of the travel services included in a package.

As the preamble explains, the traveller should be entitled to have problems resolved and, where a significant proportion of travel services included in the package travel contract cannot be provided, the traveller should be offered suitable alternative arrangements. The other remedies available to consumer include a price reduction, the termination of the package travel contract and/or compensation for damages. The directive introduces (as in the Consumer Sales Directive) a hierarchy of remedies and establishes in which circumstances particular remedies can be claimed.

The traveller has an obligation to inform the organiser of any lack of conformity (Article 13(2)), and the organiser is obliged to remedy the lack of conformity, unless that is impossible or disproportionately expensive. If the organiser does not remedy the lack of conformity within a reasonable period set by the traveller, the traveller may do so himself and request the reimbursement of the necessary expenses. The traveller is freed of any time restraints if the organiser refuses to remedy the lack of conformity, or if an immediate remedy is required.

If a significant proportion of the travel services cannot be provided as agreed in the package travel contract, the organiser is obliged to offer, at no extra cost to the traveller, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract, for the continuation of the package, including where the traveller's return to the place of departure is not provided as agreed. If this results in a package of lower quality than that specified in the package travel contract, the traveller is entitled to an appropriate price reduction. The directive balances the interests of the parties and provides that the traveller may reject the proposed alternative arrangements only if they are not comparable to what was agreed in the package travel contract or the price reduction granted is inadequate. Article 13(6) provides the traveller with the right to terminate the package travel contract without paying a termination fee and, where appropriate, to request a price reduction and/or compensation for damage (in accordance with Article 14). This possibility does not arise in every case of non-conformity. The lack of conformity must substantially affect the performance of the package, and the organiser must fail to remedy it within a reasonable period set up by the traveller. If it is impossible to make alternative arrangements, or if the traveller rejects the proposed alternative arrangements (as allowed by the directive), the traveller is entitled to a price reduction and/or compensation for damage in accordance with Article 14 without terminating the package travel contract.

In addition (Article 13(7)), for as long as it is impossible to ensure the traveller's return as agreed in the package travel contract because of unavoidable and extraordinary circumstances, the organiser must bear the costs of necessary accommodation, if possible of an equivalent category, for a period of up to three nights per traveller. Where longer periods are provided for in Union passenger rights legislation applicable to the relevant means of transport for the traveller's return, those periods apply.

In the case of a lack of conformity, the traveller is also entitled to an appropriate price reduction for any period during which there was this lack of conformity, and to receive appropriate compensation for damage sustained as a result of the lack of conformity (Article 14). The compensation is to be made without undue delay.

The old Package Travel Directive did not offer the consumer the possibility to terminate the contract due to the lack of conformity. The consumer was also entitled to a price reduction, although it was termed "compensation" (Article 4(5)). However, the compensation required that a significant proportion of the services contracted for was not provided, which may implicate a higher threshold than the lack of conformity as stipulated in Article 14 of the New Package Travel Directive. In terms of compensation for damage, while the old directive also provided in Article 5(2) that the traveller has to receive appropriate compensation for damage resulting from a failure to perform or the improper performance of the contract, it did not stipulate that the compensation had to be made without undue delay. In addition, the new directive no longer requires that the traveller must communicate any failure in the performance of the contract to the supplier of the services and the organiser and/or retailer at the earliest opportunity.

The new entitlements significantly improve the position of travellers, filling the void that existed at the EU level when it came to the remedial system available for the non-conformity of package travel.

## 2.2.4. The ongoing work

### a. Proposals for a Digital Content Directive and a Consumer Sale of Goods Directive

On 9 December 2015, the Commission presented two proposals for directives to eliminate differences in contract laws among Member States, in order to facilitate cross border trade. They are both part of the Digital Single Market Strategy for Europe, which strives to maximise the positive impacts of the digital revolution on consumers and European business activity.<sup>47</sup>

The proposal for a directive on aspects concerning contracts for the supply of digital content<sup>48</sup> aims to fully harmonise a set of key rules concerning contracts for the supply of digital content, including rules on the conformity of the digital content, the remedies available to consumers if digital content does not comply with the contract, as well as aspects concerning the right to terminate a long-term contract and the modification of the digital content. On 21 November 2017, the Parliament's IMCO and JURI Committees adopted their joint report on the proposal.<sup>49</sup> The Council agreed on the general approach on 8 June 2017.<sup>50</sup> The Parliament and the Council commenced trilogue negotiations in view of adopting the final text on 5 December 2017. One of the issues under discussion was the relationship between the directive and EU public-law rules on the protection of personal data.

The Commission's proposal for a directive regulating online and other distance sales of tangible goods<sup>51</sup> was a *de facto* recast of the existing Consumer Sales Directive but initially limited to online (and other distance) contracts only, and an elevated level of harmonisation (full).

The Communication that accompanied the proposal highlighted that the REFIT Fitness Check of the main EU consumer law (which included also the Consumer Sales Directive) might have had an influence on the proposed directive.<sup>52</sup> During discussions on the proposal in the European Parliament and the Council, it became evident that the scope should not be limited to online and other distance sales, but that coherent rules for distance and face-to-face sales were also needed.

This was supported by an impact assessment of the European Parliament.<sup>53</sup> Against this background, the Commission adopted a second proposal, on 31 October 2017, extending the scope of the initial proposal to also cover face-to-face sales. It would therefore repeal the Consumer Sales Directive and create a set of rules common to all forms of consumer sales. Otherwise, the content of the proposal would remain nearly identical to the initial one.

At its meeting in December 2018, the Justice and Home Affairs Council adopted a general approach on the proposed directive on consumer sales. It focused on coordinating the consumer sales directive proposal with the proposal on digital content. Joint trilogue discussions on both proposals started in December 2018. On 22 January 2019, the EP and the Council reached a provisional agreement on the proposal for a directive on digital content. The agreement will be officially confirmed when a deal is also reached on the consumer sales proposal.<sup>54</sup> At the time of finishing this paper, the content of the provisional agreement is not yet publicly available.

<sup>47</sup> See Chapter 2.3.2..

<sup>48</sup> Proposal for a Directive on supply of digital content, COM(2015) 634 final.

<sup>49</sup> *European Parliament*, Report on the proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, A8-0375/2017.

<sup>50</sup> *Council of the European Union*, General Approach, available at <http://data.consilium.europa.eu/doc/document/ST-9901-2017-ADD-1/en/pdf>.

<sup>51</sup> Proposal for a Directive on distance sales, COM(2015) 635 final.

<sup>52</sup> *Commission*, Communication about digital contracts, COM(2015) 633 final, p. 8.

<sup>53</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603258/EPRS\\_STU\(2017\)603258\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603258/EPRS_STU(2017)603258_EN.pdf).

<sup>54</sup> [http://europa.eu/rapid/press-release\\_STATEMENT-19-742\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-19-742_en.htm).

## b. New Deal for Consumers

Encompassing the review of six consumer law directives (the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive, the Price Indication Directive, the Consumer Sales Directive, Injunctions Directive, and the Misleading and Comparative Advertising Directive), the Regulatory Fitness and Performance (REFIT) programme intended to simplify and improve EU legislation. Based on the Commission's report identifying areas that were said to need new or enhanced regulation, the Commission proposed a "New Deal for Consumers" on 11 April 2018.<sup>55</sup>

It is composed of two proposals for directives and complemented by a set of non-legislative actions as set out in the Commission's communication. First, it is the proposal for a directive as regards better enforcement and modernisation of EU consumer protection rules. This introduces amendments to the Unfair Contract Terms Directive, the Price Indication Directive and the Unfair Commercial Practices Directive.<sup>56</sup> The aim of this directive is to reflect the recent digital developments and technological changes in consumer protection rules to ensure more efficient enforcement and to modernise EU consumer protection rules. The changes the proposal would bring are rather significant:

- New provisions on penalties in all four directives requiring the Member States to ensure that courts and authorities decide on penalties based on a harmonised set of parameters;
- The right to individual remedies for consumers when harmed by unfair commercial practices (amending the Unfair Commercial Practices Directive);
- More transparency for consumers in online marketplaces (introducing additional information requirements in the Consumer Rights Directive);
- Clarifying provisions to make it clear that online platforms must indicate search results that contain 'paid placements' and 'paid inclusion' (amending the Unfair Commercial Practices Directive);
- Extending consumer protection in respect of digital services (extending the application of the Consumer Rights Directive to digital services for which consumers do not pay money but provide personal data);
- Removing burdens for businesses (by amending the Consumer Rights Directive introducing simplifications such as allowing traders to use online communications such as web forms and chats as alternatives to traditional email for communication with consumers);
- Clarifying rules on misleading marketing of 'dual quality' products (amending the Unfair Commercial Practices Directive);
- Allowing Member States to ban some particularly aggressive or misleading off-premise selling practices (amending the Unfair Commercial Practices Directive).

Second, it is the proposal on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive 2009/22/EC.<sup>57</sup> This proposal aims to improve tools for stopping illegal practices and facilitating redress for consumers, where many of them are victims of the same infringement of their rights in a mass harm situation. It seeks to ensure that 'qualified entities' – for example consumer organisations – may seek representative actions to protect the collective

<sup>55</sup> Commission, A New Deal For Consumers, COM(2018) 183 final.

<sup>56</sup> Proposal for a Directive on better enforcement and modernisation of consumer protection, COM(2018) 185.

<sup>57</sup> Proposal for a directive on representative actions, COM(2018) 184.

interests of consumers. Therefore, it is of great practical relevance for consumer protection, which is best illustrated by recent cases, including the diesel emissions case.

The 'New Deal' is under consideration in the European Parliament and in the Council. On 28 January 2019, the EP adopted an amended proposal for the directive, regarding better enforcement and the modernisation of EU consumer protection rules.<sup>58</sup> Against the initial draft of the Commission, the adopted proposal reinstates the consumer's right of withdrawal. In addition, there have been changes made to the amount of fines for cross-border infringements and the treatment of the "dual quality of products" issue (see p. xxx).

## 2.2.5. Better enforcement of consumer rights

### a. Introduction

Better enforcement measures focus on enhancing consumer protection by improving the functionality of the existing legislation. They also work towards establishing common European legal standards, yet not by introducing new substantive rights, but by making sure that the market reality properly reflects the normative standards established by the EU.

Both the Single Market Strategy as well as the New Deal for Consumers work towards better enforcement. In addition, both pursue double-edged strategies: (1) empowering individual consumers to enforce their rights (which is sometimes problematic, since consumers are often not only discouraged from doing it by potential complications connected with making a claim, but also by the low value of the claim); (2) creating institutional enforcement strategies with enhanced cross-border cooperation.

### b. (Online) Alternative Dispute Resolution

To strengthen consumer confidence in the internal market without barriers, and to allow them to fully benefit from it, it is necessary for consumers to have access to simple, efficient, fast and low-cost ways of resolving disputes that arise from the sale of good or the supply of services, in particular when shopping cross-border. Two legislative acts have been introduced to pursue this aim, as a part of the Digital Single Market strategy.

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes aims to contribute to the proper functioning of the internal market and to protect consumers by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering alternative dispute resolution procedures. It harmonises the quality requirements for ADR entities and ADR procedures, while also providing a simple and speedy settlement mechanism. The certified ADR bodies are required to respect binding quality requirements such as impartiality, fairness, transparency and effectiveness. The ADR procedure must be easily accessible online and offline to both parties, and must be free of charge, or available at a nominal fee for consumers. The outcome of the ADR procedure must be made available within a period of 90 calendar days starting from the date on which the complete complaint file was made available to the ADR entity.

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<sup>58</sup> *European Parliament, Report on the proposal for a directive on better enforcement and modernisation consumer protection, A8-0000/2018.*

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes is linked to and complements the ADR-Directive. It introduces an ODR-platform provided by the Commission that was designed and developed in compliance with this regulation and launched in January 2016. It allows the online out-of-court resolution of disputes between consumers and traders relating to online purchases of goods and services. The ODR-platform is an interactive web-interface that can be accessed electronically and free or for a very small charge. It channels complaints to ADR bodies that have been notified to the Commission by national authorities following a positive assessment of their compliance with the quality requirements mandated in the ADR/ODR legal framework. The platform provides translations in all EU languages and ensures a fast process by inbuilt deadlines.

At the time of finishing this paper, more than 410 ADR bodies are registered on the platform.<sup>59</sup> In its first year of implementation, more than 2,000 complaints were submitted each month on average. More than 24,000 complaints were submitted on the platform in total.<sup>60</sup> The ADR procedure reached a final outcome in less than 1% of cases. In 85 % of the submitted cases, complaints were automatically closed within 30 days after submission. However, in 40 % of those cases, the disputes were resolved outside the ODR platforms workflow, because consumers were contacted directly by the trader. It can be, therefore, concluded that the ODR platform provides a useful and effective tool to consumers and traders to solve their disputes, as the mere recourse to the ODR platform by consumers has a preventive effect on traders.<sup>61</sup>

### c. Consumer Protection Cooperation Regulation

The review of the Consumer Protection Cooperation Regulation (EC) 2006/2004 (CPC Regulation) is also a part of the Digital Single Market Strategy and its e-commerce package. The new Regulation (EU) 2017/2394 will be applicable as of 17 January 2020. It sets out a cooperation framework to allow national authorities from all countries in the European Economic Area to jointly address breaches of consumer rules when the trader and the consumer are established in different countries.

It sets out a number of minimum investigative and enforcement powers that should be available to national authorities, namely the power to access any relevant document or information relating to an infringement covered by the regulation, the power to require the provision of any relevant information, the power to carry out necessary on-site inspections and the power to undertake test-purchases where necessary. According to the outcome of a report<sup>62</sup> on the functioning of the CPC-Regulation and an impact assessment,<sup>63</sup> the new regulation addresses the need to better enforce EU consumer law, especially in the rapidly developing digital sphere. It will improve the current framework by extending the scope of the regulation to allow for cooperation in new areas and strengthening the minimum powers of the competent authorities to cooperate in the cross-border context, and especially to tackle bad online practices more quickly.

<sup>59</sup> Cfr. <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>.

<sup>60</sup> *Commission*, Report on the functioning of the European Online Dispute Resolution platform, COM(2017) 744 final, p. 4.

<sup>61</sup> *Commission*, Report on the functioning of the European Online Dispute Resolution platform, COM(2017) 744 final, p. 6 f.

<sup>62</sup> Proposal for a Regulation on personal protective equipment, COM(2014) 439 final.

<sup>63</sup> *Commission*, Summary Impact Assessment, SWD(2016) 165 final.



#### d. The 'New Deal for Consumers'

Effective tools for redress, the better enforcement of consumer law and better consumer knowledge of their rights will all enhance consumer trust and confidence in the internal market. Based on these assumptions, the 'New Deal for Consumers' introduces a set of legislative and non-legislative measures aimed at achieving those objectives.

Firstly, a better redress for consumers will be ensured. The fitness check of EU consumer and marketing law has clearly demonstrated that, due to economic globalisation and digitalisation, the risk of infringements of Union law affecting the collective interests of consumers is increasing, and that such infringements are likely to affect consumers in several Member States.<sup>64</sup> Against the background of the diesel emissions case in particular, the Commission proposed a directive on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive 2009/22/EC.<sup>65</sup> It was presented together with the proposal on targeted amendments to four EU consumer law directives and aims to improve the tools for stopping illegal practices and facilitating redress for consumers where there are widespread infringements of their rights. The proposed directive will cover all infringements by traders under Union law that harm or may harm the collective interests of consumers in a variety of sectors (e.g. financial services, telecommunications, health and environment). It will ensure that 'qualified entities' (such as consumer organisations) can seek measures aimed at eliminating the continuing effects of the infringement on behalf of a group of harmed consumers in form of a redress order as appropriate and available under national laws. On top of that, the directive will set out the rules requiring the infringing trader to properly inform the consumers concerned about the final injunction orders and ensure the application of effective, dissuasive and proportionate sanctions in cases where a defendant does not comply with a final decision of a court or administrative authority in a representative action.

In addition, the already existing framework for alternative and online dispute resolution will be made more effective by promoting uptake by traders and ensuring that consumers can easily find and use these tools.

Secondly, the Commission set out the aim to strengthen the cooperation of public authorities in the single market by helping the Member States to prepare for the new CPC Regulation. It will provide assistance and monitor the adaption of national legal systems.

Thirdly, the Commission plans several steps to improve knowledge about consumer rights and to increase compliance with EU consumer law (such as consumer dialogues and training and capacity-building measures).<sup>66</sup> In order to evaluate whether a legislative act is fit for purpose, the awareness of consumer rights was a vital aspect of the review of the consumer *acquis*.

The studies gathered information on consumer awareness and experience of exercising their rights to determine the effectiveness of the legislative acts. The knowledge of specific rights is seen as an important driver of the actions that consumers take when faced with breaches of their consumer rights. The report on the fitness check concluded that, in order to achieve the consumer protection objectives of the directives, awareness of existing rules among consumers, traders and enforcement bodies should further increase. The lack of awareness is said to be a significant obstacle to achieving the goals of EU consumer legislation.<sup>67</sup>

<sup>64</sup> Commission, Report of the Fitness Check, SWD(2017) 209 final, pp. 101 ff.

<sup>65</sup> Proposal on a directive for representative actions, COM(2018) 184 final.

<sup>66</sup> Commission, A New Deal For Consumers, COM(2018) 183 final, pp. 12 f.

<sup>67</sup> Commission, Report of the Fitness Check, SWD(2017) 209 final, pp. 31 ff., 85.



The study on the application of the Consumer Rights Directive reached the same results. The lack of awareness from the consumers' side is seen as one of the main reasons for the lack of effectiveness of the Consumer Rights Directive.<sup>68</sup>

### 2.2.6. The Court of Justice of the European Union

The impulses for developing consumer protection strategies come also from the case law of the Court of Justice of the European Union. Since 2009, the Court has issued decisions on the basis of all EU consumer protection instruments, providing a binding interpretation of directives, in light of the aims that led to their adoption. Considering the substantial number of cases, they are systematically arranged in Annex 2. The list includes judgements made on the basis of: the Unfair Contract Terms Directive, the Consumer Sales Directive, the Consumer Rights Directive, the Consumer Credit Directive, the Doorstep Selling Directive, the Package Travel Directive 1990, the Distance Contracts Directive 1997, the Price Indication Directive 1998, the Directive on Alternative Dispute Resolution, and the Unfair Commercial Practices Directive. In addition, the list contains a selection of decisions made on the basis of 'market-building' directives, when they have an impact on consumers' position in the internal market.

## 2.3. Instruments that ultimately benefit EU consumers: between 2009 and 2018

### 2.3.1. Introduction

The 7<sup>th</sup> and 8<sup>th</sup> legislative periods of the European Parliament have introduced a great number of initiatives that strive at completing various aspects of the internal market. These initiatives not only contribute to achieving effectively functioning internal market, but also aim at creating a market that is open to consumers and serves to strengthen their position.

While the aim of achieving a high standard of consumer protection is not the flagship objective of those initiatives, it is certainly pursued, but through creating specific market designs rather than granting individual consumer rights.

There are several areas where significant progress has been achieved. These include digitalisation, which is tackled by the Digital Single Market Strategy, financial services markets that include financial markets instruments, consumer finance and payments as well as insurance and pensions, and market surveillance measures. This chapter presents an overview of the relevant instruments within given areas, and identifies the rights that stem from these instruments for consumers.

### 2.3.2. The Digital Single Gateway - the Digital Single Market Strategy

Digitalisation is one of the most sweeping factors changing the future of the EU. It is therefore obvious why the Commission made the EU digital single market one of its ten policy priorities in the agenda for jobs, growth, fairness and democratic change.<sup>69</sup> The Digital Single Market Strategy,<sup>70</sup> adopted on 6 May 2015, aims to enable consumers and businesses to benefit fully from the opportunities offered by the internet and digital technologies.

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<sup>68</sup> Commission, Report on the application of Directive 2011/83/EU on consumer rights, COM(2017) 259 final, p. 184.

<sup>69</sup> President Juncker's Political Guidelines, available at [https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf).

<sup>70</sup> Commission, A Digital Single Market Strategy, COM(2015) 192 final.

To complete the Digital Single Market, the strategy sets out three main aims:

- Breaking down the differences between cross-border online and offline activities to ensure better access for consumers and businesses to online goods and services across Europe. To achieve this, several legislative actions have been undertaken or are still ongoing: updating the rules on cross-border e-commerce; renewing the Consumer Protection Cooperation Regulation; establishing an online dispute resolution platform; introducing new regulations on cross-border parcel delivery services and unjustified geo-blocking; modernising the European copyright framework; reviewing the Satellite and Cable Directive and reducing VAT burdens.
- Creating the right conditions for a digital environment by high-speed, secure and trustworthy infrastructures and content services, and the right regulatory framework. Measures to achieve this aim include: overhauling the telecom rules by introducing a European Electronic Communications Code; revising the BEREC Regulation and the WIFI4EU Regulation; renewing the EU Data protection rules; reviewing the audiovisual media framework; introducing measures to improve cybersecurity and analysing the role of online platforms.
- Maximising the growth potential of the European digital economy by adopting a regulation on the free-flow of non-personal data; introducing a European Cloud initiative; revising and extending the European Interoperability Framework and presenting an e-Government Action Plan.

Although many of the legislative measures that are part of the Digital Single Market Strategy do not introduce rules that would directly improve the level of consumer protection, aimed at elevating the position of an individual consumer, the aim of building a digital single market without barriers certainly indirectly better the position that consumers enjoy on the market.

The developed technology as such has the potential to elevate the position of consumers. The internet strengthens consumers by making the use of information provided by traders more efficient and cheaper. In addition, the right of withdrawal from any failed transaction makes consumers more willing to explore the market.

By setting up a legislative scheme that opens up the EU market to consumers and allows them to access the market in a cross-border dimension, the position of the EU consumer undergoes further positive evolution. This, however, is not due to giving consumers new individual rights, but by creating a market design where consumers have a stronger position and can more effectively utilise their rights.

The Digital Single Market combines strictly consumer-oriented measures: the Consumer Sales Directive, the Digital Content Directive, the ODR Regulation, the Consumer Protection Cooperation Regulation with the market design measures: the Regulations on Roaming Charges, the Regulation on the Promotion of Internet Connectivity in Local Communities, the Regulation on the Portability of Online Content, the Cross-border Parcel Delivery Regulation, the General Data Protection Regulation, the Geo-blocking Regulation, the proposed European Electronic Communications Code, the proposed Regulation on the Body of European Regulators for Electronic Communications, the proposed E-privacy Regulation, the proposed Regulation on the Free-flow of Non-personal Data, and the proposed Directive on Copyrights in the Digital Single Market.

## a. Achievements of the Digital Single Market Strategy

### Roaming charges

Regulation (EU) 2015/2120, adopted on 25 November 2015, in force since 29 November 2015, set out a new retail pricing mechanism for Union-wide regulated roaming services. Its aim was to abolish retail roaming surcharges from 15 June 2017, without distorting domestic and visited markets. The abolition of retail roaming surcharges (also referred to as 'roam like at home') alone is not sufficient to ensure the proper functioning of the roaming market. Regulation (EU) 2017/920 therefore contributes to pricing models in domestic markets not being affected by the abolition of retail roaming surcharges.

### General Data Protection Regulation

Regulation (EU) 2016/679 regulates the processing, by an individual, company or organisation, of personal data relating to individuals in the EU. It repealed Directive 95/46/EC and entered into force on 25 May 2018. The regulation modernises the existing rules on data protection to ensure a high level of protection of natural persons and to remove the obstacles to flows of personal data within the European Union. The reform of data protection also includes a directive on the protection of data processed for the purpose of law enforcement.<sup>71</sup>

The GDPR aims to give individuals control over their personal data and to simplify the regulatory environment for businesses, in order to benefit from a level playing field.

### Portability of online content

Regulation (EU) 2017/1128 on the cross-border portability of online content services in the internal market came into force on 1 April 2018. It enables subscribers to access their portable online content services for which they have paid in their Member State of residence, when subscribers temporarily visit another Member State on holiday, a business trip or a limited stay as a student. Providers of online content services are not able to impose any additional charges on the subscriber for access and use of the service in another Member State where the subscriber is temporarily present, and are not be able to reduce the quality of delivery of the online content service.

### Parcel delivery

Regulation (EU) 2018/644 on cross-border parcel delivery services is in force since 22 May 2018, with the exception of Article 8, which will apply as of 23 November 2019. In addition to the provisions laid down in Directive 97/67/EC on postal services, this regulation enables consumers and businesses to compare parcel delivery prices on a dedicated website, while national regulatory authorities will be provided with greater powers to monitor and assess cross-border tariffs. Through increased price transparency and improved regulatory oversight, the aim is to contribute to a reduction in delivery prices and resulting in an increased consumer confidence in cross-border confidence.

### Geo-blocking

Regulation (EU) 2018/302 entered into force on 22 March 2018 and applies from 3 December 2018. It amends Regulations (EC) 2006/2004 and (EU) 2017/2394 on consumer protection cooperation and Directive 2009/22/EC on injunctions for the protection of consumers' interests. It addresses unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market by banning the blocking of access to websites and the use of automatic re-routing, including three situations with no justified reasons for geo-blocking or

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<sup>71</sup> Directive (EU) 2016/ 680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA .

other discriminations: the sale of goods without physical delivery; the sale of services supplied electronically; the sale of services provided in a specific physical location. Further, the regulation prohibits discrimination for reasons related to payment.

#### Free flow of data

On 13 September 2017, the Commission adopted a proposal for a regulation<sup>72</sup> on a framework for the free flow of non-personal data in the European Union. Together with the GDPR, the regulation aims to ensure a comprehensive and coherent approach to the free movement of all data in the EU. The new regulation will ensure the free movement of data other than personal data within the Union by laying down rules relating to data localisation requirements, the availability of data to competent authorities and data porting for professional users.

#### ePrivacy Regulation

An ex-post evaluation<sup>73</sup> of the ePrivacy Directive 2002/58/EC<sup>74</sup> determined that the directive has not kept pace with technological developments, resulting in a void of protection of communications conveyed through new services. Following the Digital Single Market Strategy, and in order to update the legal framework in the electronic communications sector, the Commission adopted a proposal for a regulation on the respect for private life and the protection of personal data in electronic communications<sup>75</sup> on 11 January 2017. The proposal now covers other market-players using the internet (Over-the-Top (OTT) providers), ensuring a level playing field for companies. It aims to enhance the security and confidentiality of communications, defining better and clearer rules on tracking technologies and at a consistent enforcement of e-Privacy rules by independent supervisory authorities. Consumers will not only benefit from a high level of privacy and data protection, but also from a secure digital single market, in which trustworthy innovative services can develop.

#### Connectivity for a Competitive Digital Single Market

To ensure that everyone in the EU will have the best possible internet connection, the Commission adopted the 'Connectivity Package' as a part of the Digital Single Market Strategy in September 2016. It constitutes a proposal on a recast of the European Electronic Communications Code, an updated regulation on the Body of Regulators of Electronic Communications (BEREC) and the WIFI4EU Regulation, which has already been adopted.

#### New European Electronic Communications Code

On 14 September 2016, the Commission proposed a new European Electronic Communications Code that would overhaul the 2009 legislative framework for telecommunications, which is needed due to the significant growth and evolution of the sector. It consists of a horizontal recasting of four existing directives (Framework Directive 2002/21/EC, Authorisation Directive 2002/20/EC, Access Directive 2002/19/EC, Universal Service Directive 2002/22/EC) and focuses on the new objective of ubiquitous and unconstrained connectivity, the harmonisation of the competences of national regulatory authorities and the harmonisation of spectrum-related issues, as well as revised rules on services.

<sup>72</sup> Proposal for a Regulation on free flow of non-personal data, COM(2017) 495 final.

<sup>73</sup> Commission, Ex-post REFIT evaluation of the ePrivacy Directive 2002/58/, SWD/2017/05 final – 2017/03 (COD).

<sup>74</sup> Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector as modified by Directive 2009/136/EC of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

<sup>75</sup> Proposal for a Regulation concerning the respect for private life and protection of personal data, COM(2017) 10 final.

It provides the telecoms industry with increased choice and lower prices, and allows the development of high quality and innovative services.

#### Regulation on the Body of European Regulators of Electronic Communications (BEREC)

The updated regulation on the Body of European Regulators of Electronic Communications (BEREC)<sup>76</sup> aims to transform BEREC into a fully-fledged agency by allocating new tasks and granting legally binding powers. In trilogue discussions, the Parliament and the Council agreed on giving new tasks to BEREC, and moving from a simple majority to a two-thirds majority for key decisions of the Board of Regulators and of the Management Board. Furthermore, BEREC will remain a body of NRAs while the BEREC Office will have legal personality.

#### Regulation on the promotion of internet connectivity in local communities and public spaces (WIFI4EU)

Regulation (EU) 2017/1953, which entered into force on 4 November 2017, aims at the promotion of accessible high performance mobile internet in local communities. It also seeks to raise awareness of the benefits of such connectivity. The areas covered will encompass public administrations, libraries and hospitals, as well as outdoor spaces accessible to all. EU funds will be used to provide financial support to the establishment of such networks.

#### Copyrights

The Commission has presented legislative proposals for a regulation and a directive on copyrights in the Digital Single Market, and a directive and regulation to implement the Marrakesh treaty in EU law. This proposal raises certain controversies, as it has been pointed out<sup>77</sup> that the proposal misses an opportunity to deal with the matter from the consumer's point of view. It focuses on the commercial battle between platforms like YouTube and the music industry. At the same time, it does not contribute to fixing the uncertainty that consumers experience when they want to share content online, leaving consumers in a state of uncertainty about the content they share online.

Table 3: Achievements of the Digital Single Market Strategy

Legislative Act	Status	Consumer benefits
Regulation (EU) 2015/2120 and Regulation (EU) 2017/920 <b>roaming charges</b>	In force, applicable as of 30 April 2016 and 12 June 2016	'Roam like at home': paying domestic prices for roaming calls, SMS and data
Regulation (EU) 2017/1953 <b>WIFI4EU</b>	In force, applicable as of 4 November 2017	Free of charge access to a high-performance wireless internet Enhancing the best possible internet connection
Regulation (EU) 2017/1128	In force, applicable as of 1 April 2018	Enjoying online films, music, video games and e-book subscriptions while travelling in the EU

<sup>76</sup> Proposal for a Regulation establishing the Body of European Regulators for Electronic Communications, COM(2016) 591 final.

<sup>77</sup> BEUC, EU Copyright Reform: Proposal for a Directive on Copyright in the Digital Single Market, BEUC demands.

Legislative Act	Status	Consumer benefits
<b>portability of online content services</b>		
Regulation (EU) 2018/644 <b>parcel delivery</b>	In force; applicable as of 22 May 2018	More affordable deliveries and convenient return options across Europe  Increasing trust and confidence in non-domestic purchases
Regulation (EU) 2016/679 <b>GDPR</b>	In force, applicable as of 25 May 2018	High level of protection of personal data  Increasing trust and security when handling personal data
Regulation (EU) 2018/302 <b>geo-blocking</b>	In force, applicable as of 3 December 2018	Greater availability of products increasing choice and access online  No territorial/geographical discrimination between consumers depending on their nationality and/or place of residence
Directive on establishing the <b>European Electronic Communications Code</b>	Proposal adopted on 14 September 2016, awaiting Parliament 1st reading / single reading / budget 1st stage	Increased choice and lower prices, high quality and innovative services within the telecoms industry  Enhancing the best possible internet connection
Regulation establishing the <b>Body of European Regulators for Electronic Communications</b>	Proposal adopted on 14 September 2016, awaiting Parliament 1st reading / single reading / budget 1st stage	Enhancing the best possible internet connection
Directive on <b>copyrights</b> in the digital single market	Proposal adopted on 14 September 2016, awaiting Parliament 1st reading / single reading / budget 1st stage	Better choice and access to content online and across borders

Legislative Act	Status	Consumer benefits
<b>e-Privacy Regulation</b>	Proposal, adopted on 11 January 2017, awaiting Parliament 1st reading / single reading / budget 1st stage	High level of privacy and data protection Use of new developed innovative services in a trustworthy and secure digital single market
<b>Free flow of non-personal data Regulation</b>	Proposal adopted on 13 September 2017, awaiting Parliament 1st reading / single reading / budget 1st stage	Greater choice of hosting service providers at more competitive prices

### 2.3.3. Financial markets

Among the fundamental freedoms that underpin the EU single market (the free movement of persons, goods, services and capital), the free movement of capital is the most recent. It became a directly applicable treaty freedom only in 1992, introduced by the Maastricht Treaty. Article 63 of the Treaty on the Functioning of the EU prohibits all restrictions on capital movements and payments, not only within the EU, but also between EU countries and countries outside the EU. However, further provisions in the Treaty stipulate a number of exceptions to the principle of the free movement of capital, in particular to prevent problems related to taxation, the prudential supervision of financial institutions, public policy and security.

To achieve the aim of the integrated European financial market as an important part of the internal market, the EU has introduced a harmonised statutory framework for banks, insurance companies, pension funds and providers of a broad range of financial products and services. The 7<sup>th</sup> and 8<sup>th</sup> legislative periods have been particularly fruitful from this perspective, bringing new instruments in all sectors of the financial market.

#### a. Financial markets instruments

##### Investment services

The Markets in Financial Instruments Directive 2004/39/EC (MiFID) was in force between 31 January 2007 and 2 January 2018. It governed provisions of investment services in financial instruments by banks and investment firms, as well as the operation of traditional stock exchanges and alternative trading venues. The Commission adopted new rules revising the MiFID framework in June 2014, consisting of a directive (MiFID II) and a regulation (MiFIR). They became applicable as from 3 January 2018. MiFID II aims to reinforce the rules on securities markets. By introducing requirements on the organisation and conduct of actors in securities markets, it strengthens the protection of investors. MiFIR sets out uniform requirements relating to financial instruments.

##### Short selling

Regulation (EU) 236/2012 on short selling lays down a common regulatory framework with regard to the requirements and powers relating to short selling and credit default swaps in order to ensure a high level of consumer and investor protection. It increases transparency by requiring the flagging of short



sales, so that regulators know which transactions are short, and gives national regulators powers – in exceptional circumstances, and subject to coordination by the European Securities and Markets Authority (ESMA) – to temporarily restrict or ban the short selling of any financial instrument. It also requires central counterparties providing clearing services to ensure that there are adequate arrangements in place for a buy-in of shares, as well as fines for a settlement failure.

### Securitisation

To re-establish a securitisation market in Europe by differentiating simple, transparent and standardised securitisation products, two regulations were adopted. Regulation (EU) 2017/2401 amending Regulation (EU) 575/2013 on Capital Requirements makes the capital treatment of securitisations for banks and investment firms more risk-sensitive and better able to properly reflect the specific features of STS securitisations. Regulation (EU) 2017/2402 on Securitisation applies to all securitisation products, including due diligence, risk retention and transparency rules. It also sets out clear criteria to identify simple, transparent and standardised (STS) securitisations.

### Securities Prospectus

The New Prospectus Regulation (EU) 2017/1129 repealing Prospectus Directive 2003/71/EC aims to enhance investor protection and improve market efficiency by simplifying the administrative burdens relating to the publication of a prospectus for issuing and offering securities. It lays down requirements for drawing up, approving and distributing a prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

### Integrity of securities markets

As part of its work to make financial markets sounder and more transparent, the EU enacted new rules against market abuse in June 2014. The new rules strengthened and replaced the original market abuse directive (MAD). Adopted in 2003, the MAD introduced a framework to harmonise core concepts and rules on market abuse and strengthen cooperation between regulators. However, these rules were eventually outpaced by the growth of new trading platforms, over-the-counter trading and new technology such as high frequency trading. As a result, the Commission proposed to replace the MAD with a regulation and a new directive on market abuse.

The Market Abuse Regulation (EU) 596/2014 (MAR) broadens the scope of instruments covered by the market abuse framework, strengthening in particular the regime for commodity and related derivative markets. It explicitly bans the manipulation of benchmarks and reinforces the investigative and sanctioning powers of regulators. It also ensures a single rulebook while reducing administrative burdens on smaller and medium-sized issuers where possible.

The new market abuse Directive 2014/47/EU (the new MAD) complements the MAR by requiring Member States to introduce common definitions of criminal offences of insider dealing and market manipulation, and imposing maximum criminal penalties for the most serious market abuse offences. Member States have to make sure that such behaviour, including the manipulation of benchmarks, is a criminal offence, punishable with effective sanctions everywhere in Europe.

To complement the sanctioning regime provided by the new MAD and MAR, in 2016 the EU adopted a specific benchmark Regulation (EU) 2016/2011. The regulation establishes a common set of rules governing the production and use of benchmarks across various Member States.

### Transparency requirements for listed companies

The Transparency Directive 2004/109/EC, revised in 2013 by Directive 2013/50/EU, aims to ensure the transparency of information for investors through a regular disclosure of periodic and ongoing regulated information, and the dissemination of such information to the public. Under the revised transparency directive, it was decided to develop a central European electronic access point (EEAP) providing access to the various storage mechanisms. The European Securities and Markets Authority (ESMA) is now developing this central access point and will be responsible for its operation.

ESMA is also developing a harmonised electronic format for reporting. The format for annual financial reports will be mandatory from 1 January 2020. It will make reporting easier and facilitate the accessibility, analysis and comparability of reports.

### Investment funds

As part of its effort to create a barrier-free market for collective investment funds, the EU enacted the following legislation:

- Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
- Directive 2011/61/EU on Alternative Investment Fund Managers
- Regulation (EU) 345/2013 on European venture capital funds
- Regulation (EU) 346/2013 on European social entrepreneurship funds
- Regulation (EU) 2015/760 on European long-term investment funds
- Regulation (EU) 2017/1131 on money market funds

### Derivatives

In 2012, the EU adopted the European Market Infrastructure Regulation 648/2012 (EMIR), which entered into force on 16 August 2012 and aims to increase transparency in the over-the-counter (OTC) derivatives markets, mitigate credit risk and reduce operational risk. To achieve this aim, it provides that all information on all EU derivative contracts must be reported to trade repositories and made accessible to supervisory authorities. The Regulation also sets out obligations for central counterparties (CCPs) and requires that electronic means must be used for the timely confirmation of the terms of OTC derivatives contracts.

### Recovery and resolution of central counterparties

To address the challenges due to the increased importance of central counterparties (CCPs), and the potential risks to financial stability if a CCP were to fail, the Commission has adopted a legislative proposal on CCP recovery and resolution.<sup>78</sup> It aims to ensure that CCPs and national authorities in the EU have the means to act decisively in a crisis scenario. The new rules will ensure that the critical functions of CCPs are preserved, while maintaining financial stability and helping to avoid the costs associated with the restructuring and the resolution of failing CCPs from falling on taxpayers.

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<sup>78</sup> Proposal for a Regulation on a framework for the recovery and resolution of central counterparties, COM(2016) 856 final.

## Securities financing transactions

During the financial crisis, regulators and supervisors had difficulties anticipating risks in the area of securities financing. This was mainly due to a lack of data. In 2015, the EU therefore adopted the Securities Financing Transactions Regulation 2015/2365 (SFTR) to increase the transparency of the SFTs.

## Central securities depositories

Settlements across borders present higher risks and costs for investors within one country. To harmonise rules in this area, the EU has adopted Regulation 909/2014 on central securities depositories. The main objective of the regulation is to increase the safety and efficiency of securities settlement and settlement infrastructures in the EU.

## Securities and claims ownership

In March 2018, the Commission proposed the adoption of common conflict-of-laws rules on the third-party effects of assignment of claims.<sup>79</sup> The proposal complements the Rome I Regulation. It provides that the law of the country where the assignor has its habitual residence will govern the third-party effects of the assignment of claims. By introducing legal certainty, the new measures will contribute to promoting cross-border investment, enhancing access to credit and will contribute to market integration.

## b. Consumer finance and payments

### Consumer financial services

Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features gives people in the EU the right to a basic payment account regardless of a person's place of residence or financial situation. The directive also improves the transparency of bank account fees and makes it easier to switch banks.

Directive 2014/49/EU on deposit guarantee schemes requires the Member States to introduce laws setting up at least one deposit guarantee scheme that all the banks must join. Member States must ensure a harmonised level of protection for depositors and must produce lists of the types of deposits that are protected.

Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) lays down uniform rules on the format and content of the key information document to be drawn up by PRIIP manufacturers, as well as on the provision of the key information document to retail investors. It aims to ensure that retail investors always receive the information they need in order to take informed decisions, and therefore boosts consumer trust in financial markets.

### Payment services

In 2015, the EU adopted new Directive 2015/2366/EU on payment services (PSD 2) to improve the existing rules on payment services, while taking into account the new digital payment services. It became applicable in January 2018. The directive includes provisions making it easier and safer to use internet payment services, and better protecting consumers against fraud, abuse, and payment problems. It promotes innovative mobile and internet payment services and strengthens the role of the European Banking Authority (EBA), which coordinates supervisory authorities and drafts technical standards.

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<sup>79</sup> Proposal for a Regulation on the law applicable to the third-party effects of assignments of claims, COM(2018) 096 final.

The directive is part of a legislative package that also includes Regulation 2015/751 on multilateral interchange fees. Under Regulation 2015/751 on multilateral interchange fees, the fees for transactions based on consumer debit and credit cards are limited, and retailers are banned from imposing surcharges on customers for the use of these types of cards.

### Single Euro Payments Area

While the Payment Services Directive (2007/64/EC) lays out the legal foundation for SEPA, the SEPA Regulation (EU) 260/2012 sets the rules and a deadline in February 2014 (later postponed to August 2014) for euro area countries to make credit transfers and direct debits in euro under the same conditions. Furthermore, it contains arrangements for euro transfers in countries outside of the euro area.

Regulation (EC) 924/2009 on charges for cross-border payments in euro was adopted in the SEPA context and requires banks to apply the same charges for domestic and cross-border electronic payment transactions in euro. In April 2018, the Commission presented a proposal<sup>80</sup> to extend the benefits introduced by Regulation (EC) No 924/2009 to consumers and businesses in non-euro countries. Under this proposal, everyone in the EU will be able to transfer money cross-border, in euro, at the same cost as they would pay for a domestic transaction. The new rules will also require that consumers are informed of the cost of currency conversion before they make a payment abroad in a different currency than their home one.

### E-Money

The E-money Directive 2009/110/EC (EMD) sets out the rules for the business practices and supervision of e-money institutions. The directive aims to lay down the foundations for a single market for e-money services in the EU. The directive has provisions to align EU requirements for e-money services and put in place a coherent set of requirements for obtaining a licence as an e-money institution. It also facilitates access for newcomers to the e-money market by ensuring prudential rules are proportional to the risks faced by e-money institutions. This includes reducing the initial capital requirement to €350,000 and setting out new rules on calculating own funds.

## c. Insurance and pensions

### Solvency II

Solvency II is a harmonised, prudential framework for insurance firms, introduced in 2009 to replace a patchwork of rules in the areas of life insurance, non-life insurance and reinsurance. The Solvency II rules introduce prudential requirements tailored to the specific risks that each insurer bears.

They promote transparency, comparability and competitiveness in the insurance sector. The framework consists of:

- Solvency II Directive 2009/138/EC (amended by the Omnibus II Directive 2014/51/EU)
- Delegated and implementing acts, such as Solvency II Delegated Regulation (EU) 2015/35 (amended by Regulation (EU) 2016/467) and Delegated Regulation (EU) 2017/1542
- Technical standards

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<sup>80</sup> Proposal for a Regulation on charges on cross-border payments in the Union and currency conversion charges, COM(2018) 163 final.

## Insurance distribution

In 2016, the European Commission adopted the new Insurance Distribution Directive 2016/97/EU (IDD) to broaden the scope of the Insurance Mediation Directive to all sellers of insurance products, including insurance companies that sell directly to consumers. The IDD applies from 1 October 2018. Under the IDD, consumers and retail investors who buy insurance products benefit from greater transparency in the price and costs of insurance products, along with a simple, standardised insurance product information document (IPID) to help make an informed decision. The newly introduced rules on transparency and business conduct aim to help consumers avoid buying products that do not meet their needs. Where insurance products are offered in a package with another product or service, consumers will have the choice to buy the main product or service without the insurance policy.

## Motor Insurance

Under the 2009 Motor Insurance Directive 2009/103/EC, anyone who holds a compulsory motor insurance policy in an EU country is covered to drive throughout the entire EU. In May 2018, the European Commission presented a proposal to amend the motor insurance directive.<sup>81</sup> The new rules will provide for full compensation of a victim of a motor vehicle accident, even when the insurer is insolvent. They will also ensure that insurers treat claims history statements issued by an insurer in a different Member State equally to those issued domestically. On top of that, it will give Member States the powers to tackle uninsured driving.

## Occupational pension funds

Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, also known as the IORP Directive, regulates occupational pension funds operating in the EU. In December 2016, the EU adopted a recast version<sup>82</sup> of the IORP Directive to encourage long-term investment through occupational pension funds. It introduces minimum harmonisation rules for institutions managing collective retirement schemes for employers on behalf of their employees. EU countries must transpose the new rules into their national law by 13 January 2019.

## Personal pension products

The Commission adopted a proposal for a regulation on a pan-European personal pension product (PEPP)<sup>83</sup> in June 2017. PEPP will be a voluntary scheme for saving for retirement, and will be offered by financial companies across the EU. It will be available to savers as a complement to public and occupational pension systems, alongside existing national private pension schemes.

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<sup>81</sup> Proposal for a Directive relating to insurance in respect of the use of motor vehicles, COM(2018) 336 final.

<sup>82</sup> Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs).

<sup>83</sup> Proposal for a Regulation on a PEPP, COM(2017) 343 final.

Table 4: Achievements in the financial markets sector

Legislative Actions	Consumer benefits
<b>Investment services</b> <ul style="list-style-type: none"> <li>• Directive 2014/65/EU on markets in financial instruments</li> <li>• Regulation (EU) No. 600/2014 on markets in financial instruments</li> </ul>	<p>Legal certainty by creating a harmonised legal framework for investors</p> <p>Better protection of investors and financial system</p> <p>More transparency and confidence in financial system</p>
<b>Short-selling</b> Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps	<p>Increase of transparency by requirement of flagging of short sales</p> <p>Higher security of financial markets due to harmonized legal framework on short selling</p>
<b>Securitisation</b> <ul style="list-style-type: none"> <li>• Regulation (EU) 2017/2401 on prudential requirements for credit institutions and investment firms</li> <li>• Regulation (EU) 2017/2401 on securitisation</li> </ul>	<p>Providing a harmonized framework for a better recovery of securitisation markets, therefore providing an indirect benefit for businesses as well as individuals</p> <p>Better differentiation of simple, transparent and standardized products from complex, opaque and risky instruments</p> <p>More transparency by prohibition of re-securitisation</p>
<b>Securities prospectus</b> Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market	<p>Indirect benefits due to improving investor protection and market efficiency, while enhancing the internal market for capital by the provision of information ensuring informed investment decisions</p> <p>Increase of confidence in securities</p>
<b>Integrity of securities markets</b> <ul style="list-style-type: none"> <li>• Regulation (EU) No. 596/2014 on market abuse</li> <li>• Directive 2014/57/EU on criminal sanctions for market abuse</li> </ul>	<p>The creation of an internal market for financial services (which requires market integrity) contributes to economic growth and job creation, thus entailing indirect benefits for consumers</p>

Legislative Actions	Consumer benefits
<ul style="list-style-type: none"> <li>Regulation (EU) 2016/1011 on indices used as benchmarks</li> </ul>	
<p><b>Transparency requirements for listed companies</b></p> <p>Directive 2013/50/EU amending Directive 2004/109/EC on the harmonisation of transparency requirements</p>	<p>Harmonised transparency requirements contribute to a genuine single market and foster growth and job creation by better allocation of capital and reducing cost, thus also indirectly providing benefits for consumers</p>
<p><b>Investment funds</b></p> <ul style="list-style-type: none"> <li>Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)</li> <li>Directive 2011/61/EU on Alternative Investment Fund Managers</li> <li>Regulation (EU) 345/2013 on European venture capital funds</li> <li>Regulation (EU) 346/2013 on European social entrepreneurship funds</li> <li>Regulation (EU) 2015/760 on European long-term investment funds</li> </ul>	<p>Harmonised legal frame contributes to ensuring a more effective and more uniform protection for unit-holders</p> <p>By establishing common requirements governing the authorisation and supervision of Alternative Investment Fund Managers, a coherent approach to the related risks and their impact on investors and market is provided</p> <p>By providing harmonised rules for venture capital funds, a uniform level of investor protection is guaranteed and confusion as to the investment proposition can be avoided, thus contributing to economic growth as well as the creation of jobs and capital mobilisation</p>
<p><b>Derivatives</b></p> <p>Regulation (EU) No. 648/2012 on OTC derivatives, central</p>	<p>By laying down conditions for mitigating the risks associated with OTC derivative contracts and improving the transparency of derivative contracts, a better protection of financial markets is fostered, thus indirectly entailing benefits for consumers</p>



Legislative Actions	Consumer benefits
counterparties and trade repositories	
<b>Recovery and resolution of central counterparties</b> Proposal for a Regulation on a framework for the recovery and resolution of central counterparties (COM(2016) 856 final)	An effective risk management of the central counterparties and robust supervisory oversight guarantee that the exposure to the diverse risks is adequately covered, thus contributing to the overall stability and resilience of financial markets, which indirectly protects consumers as well
<b>Securities financing transactions</b> Regulation (EU) 2015/2365 on transparency of securities financing transactions	Better protection and stability of financial markets, which also entails indirect benefits for consumers.
<b>Central securities depositories</b> Regulation (EU) No 909/2014 on central securities depositories	An increase in the safety and efficiency of securities settlement and settlement infrastructures contributes to a safe financial market and more confidence in proper and timely securities transactions
<b>Securities and claims ownership</b> Proposal for a Regulation on the law applicable to the third-party effects of assignments of claims	Legal certainty in regard to which country's law applies to determine who owns a claim or a security after a cross-border transaction
<b>Consumer financial services</b> <ul style="list-style-type: none"> <li>• Directive 2014/92/EU on comparable and transparent fees for all payment accounts and payment account switching</li> <li>• Directive 2014/49/EU on deposit guarantee schemes</li> <li>• Regulation (EU) 1286/2014 on key</li> </ul>	Right to a basic payment account regardless of the place of residence or financial situation Switching banks easily Improved access to deposit guarantee schemes Making informed decisions on packaged retail and insurance-based investment products

Legislative Actions	Consumer benefits
information documents for PRIIPs	
<b>Payment services</b> <ul style="list-style-type: none"> <li>• Payment services directive 2 2015/2366/EU (PSD 2)</li> <li>• Regulation 2015/751 on multilateral interchange fees</li> </ul>	<p>Easier and safer use of internet payment services</p> <p>A better protection against fraud, abuse, and payment problems</p> <p>Use of innovative mobile and internet payment services</p> <p>Limited fees for transactions based on consumer debit and credit cards and no surcharges for the use of these types of cards</p>
<b>Single Euro Payments Area</b> <ul style="list-style-type: none"> <li>• Payment services directive 2007/64/EC</li> <li>• Regulation (EC) 924/2009 on charges for cross-border payments in euro</li> <li>• SEPA regulation (EU) 260/2012</li> <li>• Proposal for a Regulation amending Regulation (EC) 924/2009</li> </ul>	<p>Make and receive cross-border credit transfers, direct debit payments, and card payments in euro under the same basic conditions.</p> <p>Under the proposal, EU consumers will be able to transfer money cross-border at the same cost as for a domestic transaction and will enjoy fairer currency conversions.</p>
<b>E-Money</b> E-Money Directive 2009/110/EC	Secure single market for electronic money services
<b>Solvency II</b> <ul style="list-style-type: none"> <li>• Solvency II Directive 2009/138/EC</li> <li>• Solvency II delegated Regulation 2015/35</li> <li>• Solvency II delegated regulation (EU) 2017/1542</li> </ul>	By establishing a common legal frame for insurance and reinsurance undertakings may lead to a reduction of costs and eventually be of indirect benefit for consumers
<b>Insurance distribution</b>	Greater transparency in the price and costs of insurance products

Legislative Actions	Consumer benefits
Insurance Distribution Directive 2016/97/EU (IDD)	Make informed decisions on buying insurance products that meet the consumer's need.
<b>Motor insurance</b> Proposal for a Directive amending the 2009 Motor Insurance Directive	Increasing the functioning of the Single Market and fostering the benefits established by the Motor Insurance Directive.
<b>Occupational pension funds</b> Directive (EU) 2016/2341	Informed personal financial and retirement planning
<b>Personal pension products</b> Proposal for a Regulation on a pan-European Personal Pension Product (PEPP)	Greater choice between personal pension providers

### 2.3.4. Product Safety and Market Surveillance

#### a. Introduction

EU rules on product safety and market surveillance aim to ensure that only safe products are sold on the market, and that product safety legislation and rules are effectively applied. In addition to the 2001 General Product Safety Directive,<sup>84</sup> specific safety rules apply to toys, electrical and electronic goods, cosmetics, chemicals and other specific product groups.

#### b. Overview of the instruments

##### Toys safety

Directive 2009/48/EC aims to reinforce the safety of toys on the internal market. It updates and completes the existing rules and takes into account new technological developments and scientific knowledge. In order to ensure a high level of protection of consumers and of the environment, the directive reinforces market surveillance and essential safety requirements for toys.

The directive was the first directive following the principles of the new legislative framework for market surveillance and CE marking agreed upon in 2008.<sup>85</sup>

<sup>84</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

<sup>85</sup> Regulation (EC) 765/2008 of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93; Decision 768/2008 of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC; Regulation (EC) 764/2008 of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC.

### Safety of Motor Vehicles

Regulation (EC) 661/2009 lays down harmonised rules on the construction of motor vehicles in order to provide a high level of safety and environmental protection. It strengthens the type-approval requirements for the general safety of motor vehicles in the EU.

### Cosmetics

Regulation (EC) 1223/2009 aims to ensure the functioning of the internal market by simplifying rules and procedures for the marketing of cosmetics, as well as reducing administrative burdens and ambiguities for European companies in the cosmetics sector. It also strengthens elements of the regulatory framework for cosmetics, such as the in-market control. European consumers therefore not only benefit from the free movement of cosmetics products, but also from a higher standard in regard to the protection of human health.

### Electrical and Electronic Equipment

Directive 2011/65/EU extends restrictions on the use of hazardous substances established in Directive 2002/95/EC to a wider range of electrical and electronic equipment (EEE). It improves the safety of products such as mobile phones, refrigerators and electronic toys by setting standards that EEEs must comply with when placed on the market, and introduces obligations on manufacturers, importers and distributors in regard to ensure these standards.

### Pyrotechnic

Directive 2013/29/EU establishes rules to guarantee the free movement of pyrotechnic articles within the internal marketing, and to ensure a high level of protection of human safety and the environment. It lays down essential safety requirements with which pyrotechnic articles must comply when made available on the market.

### Recreational Crafts

Directive 2013/53/EU updates the existing legislation that covers the design and manufacture of motor and sailing craft by laying down requirements for manufacturers, importers and distributors to reflect technological developments that have resulted in improved environmental performance. It aims to ensure fair competition for motor and sailing craft in the EU market.

### Civil Explosives

Directive 2014/28/EU applies to all explosives for civil uses. It aims to ensure that explosives on the market fulfil the requirements providing for a high level of protection of health and safety and other public interests, while also guaranteeing the function of the internal market. It applies to all forms of supply, including distance selling.

### Simple Pressure Vessels

Directive 2014/29/EU establishes uniform rules on the placing on the market and operation of simple pressure vessels. It establishes high safety standards by laying down essential safety requirements for the protection of the human health and safety, and the protection of domestic animals and property with regard to the hazards resulting from the leakage or bursting of simple pressure vessels.

### Electromagnetic Compatibility

Directive 2014/30/EU aims to ensure that electrical and electronic equipment comply with an adequate level of electromagnetic compatibility.

Therefore, it lays down uniform rules to create a high standard of protection against electromagnetic disturbance in order to guarantee the free movement of electrical and electronic equipment within the internal market. The directive covers apparatus and fixed installations.

#### Non-automatic Weighing Instruments

Directive 2014/31/EU lays down uniform rules on the sale and operation of non-automatic weighing instruments. It aims to ensure that the public is protected against the incorrect results of weighing operations, and at establishing a high level of safety for users. The directive applies to all non-automatic weighing instruments.

#### Lifts

Directive 2014/33/EU aims to allow lifts and their safety components to be sold throughout the internal market, and to ensure a high level of safety for users and maintenance staff. It establishes a uniform set of rules on the sale and operation of lifts and their safety components. The directive applies to all lifts that are intended for the transport of persons or goods.

#### ATEX

Directive 2014/34/EU covers equipment and protective systems intended for use in potentially explosive atmospheres. It establishes essential health and safety requirements and conformity assessment procedures to be applied before products are placed on the EU market.

#### Low Voltage

Directive 2014/35/EU aims to ensure high levels of protection of health and safety of persons and domestic animals and property. It lays down a set of uniform conditions for the sale of electrical equipment designed for use within a voltage rating of between 50 and 1000 V for alternating current, and between 75 and 1500 for direct current. The directive covers all health and safety risks to ensure that electrical equipment is used safely and for the applications for which it was made.

#### Radio Equipment

Directive 2014/53/EU introduces a regulatory framework for the commercialisation and operation of radio equipment. It does not apply to radio equipment exclusively used for activities concerning public security, defence and state security. Under the directive, radio equipment must be constructed so that the protection of health and safety of persons and of domestic animals and of property is ensured. Furthermore, the directive ensures an adequate level of electromagnetic compatibility and an efficient use of radio spectrum in order to avoid harmful interference.

#### Pressure Equipment

Directive 2014/68/EU establishes a set of rules on essential safety requirements for pressure equipment and assemblies (boilers, pressure cookers, fire extinguishers, heat exchangers, steam generators). It lays down strict specifications the equipment must conform with when entering the EU market.

#### Personal Protective Equipment

Regulation (EU) 2016/425 aims to ensure the health and safety of users of personal protective equipment. It establishes a set of requirements for the design and manufacture of such equipment to be sold and used throughout the EU.

#### Cableways Installation

Regulation (EU) 2016/424 lays down rules on the commercialisation and the free movement of subsystems and safety components for cableway installations.

It also contains rules on the design, construction and entry into service of new cableway installations. The regulation follows the aim of ensuring that cableway installations conform to requirements guaranteeing a high level of protection of human health and safety and ensuring the proper functioning of the internal market for subsystems of cableway installations and safety components.

### Gas Appliances

Regulation (EU) 2016/426 updates the internal market rules applicable to gas appliances. It ensures that appliances and their fittings meet the requirements for a high level of protection of human health and safety, the safety of animals and property and for sensible energy use.

### Medical Devices

Regulation (EU) 2017/745 updates the rules on placing on the EU market, making available and putting into service medical devices for human use and their accessories. It establishes rules on how evaluations on products are carried out concerning such devices or accessories. The regulation aims to improve patient safety by introducing more stringent procedures for conformity assessment (to ensure that unsafe or non-compliant equipment does not end up on the market) and post-market surveillance.

### In vitro Diagnostic Medical Devices

Regulation (EU) 2017/746 updates the rules on placing on the EU market, making available and putting into service in vitro medical devices for human use and their accessories. It contains rules on the conduct of performance studies that are carried out in the EU concerning in vitro diagnostic medical devices or accessories. The regulation aims to improve patient safety by introducing stricter procedures for conformity assessment (to ensure that unsafe or non-compliant equipment does not end up on the market) and post-market surveillance.

### Approval and Market Surveillance of Motor Vehicles

Regulation (EU) 2018/858 lays down rules and principles for the type-approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, and for individual vehicle approval, with a view to ensuring the proper functioning of the internal market for the benefit of businesses and consumers and in order to offer a high level of safety and of health and environmental protection.

### Compliance and Enforcement of Union Harmonisation Legislation on Products

On 19 December 2017, the Commission published a proposal for a regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products. The proposal comes after the Commission's analysis showed that an increased number of products sold in the internal market do not meet requirements for safety or consumer information required by the EU legislation, thus distorting competition and placing consumers at risk. The market surveillance of products ordered by consumers directly online from third countries was particularly problematic. The proposed regulation seeks to remedy this situation by enabling better cooperation among national market surveillance authorities. It covers market surveillance of non-food products ('industrial products') which are placed on the internal market subject to the Union's harmonising acts.

Table 5: Achievements on Product Safety and Market Surveillance

Legislative Actions	Consumer benefits
<b>Toys safety</b> Directive 2009/48/EC	High level of protection of public interests; ensuring the health and safety of consumers.
Regulation on <b>General Safety of Motor Vehicles</b> (EC) No 661/2009	Strengthening the type-approval requirements for the general safety of motor vehicles.
<b>Cosmetics</b> Regulation (EC) No 1223/2009	Protecting the health and safety of consumers by setting standards for the presentation of a cosmetic product and in particular its form, odour, colour, appearance, packaging, labelling, volume and size.  Setting a uniform definition for nanomaterials.  Protecting from misleading claims concerning efficacy and other characteristics of cosmetic products.
Directive on <b>Restriction of Hazardous Substances in Electrical &amp; Electronic Equipment</b> 2011/65/EU	Protecting of human health.
<b>Pyrotechnic Articles</b> Directive 2013/29/EU	Safety requirements for pyrotechnic articles in order to protect consumers and to prevent accidents.  Easily understandable instructions and safety information.
<b>Recreational Crafts</b> Directive 2013/53/EU	Ensuring the health and safety of consumers.
Proposal for a <b>Market Surveillance</b> Regulation COM(2013)075 final	Setting a framework for verifying that products meet requirements safeguarding, at a high level, the health and safety of persons in general, as well as health and safety in the workplace, consumer protection, the environment, public security and other public interests.
Proposal for a <b>Consumer Product Safety</b> Regulation COM(2013)078 final	High level of protection of public interests; ensuring the health and safety of consumers.
<b>Civil Explosives</b> Directive 2014/28/EU	Providing for a high level of protection of health and safety.
<b>Simple Pressure Vessels</b> Directive 2014/29/EU	Ensure the protection of persons, domestic animals and property with regard to the hazards resulting from leakage or bursting.



Legislative Actions	Consumer benefits
<b>Electromagnetic Compatibility Directive</b> 2014/30/EU	High standard of protection against electromagnetic disturbances.
<b>Non-automatic Weighing Instruments Directive</b> 2014/31/EU	Protection against incorrect results of weighing operations; ensuring the safety of users.
<b>Lifts Directive</b> 2014/33/EU	Ensuring the protection of health and safety of consumers.  Safety component for lifts is accompanied by the instructions in a language that can be easily understood by consumers and other end-users.
<b>ATEX Directive</b> 2014/34/EU	Providing for a high level of protection of health and safety.
<b>Low Voltage Directive</b> 2014/35/EU	Ensuring that electrical equipment is used safely and for the applications for which it was made.
<b>Radio Equipment Directive</b> 2014/53/EU	Protecting the health and safety of persons, of domestic animals and of property.
<b>Pressure Equipment Directive</b> 2014/68/EU	Laying down essential safety requirements for pressure equipment and assemblies to ensure safety and health of users.
Regulation (EU) 2016/425 on <b>Personal Protective Equipment</b>	Protecting the health and safety of consumers.  PPE is accompanied by instructions in a language that can be easily understood by consumers and other end-users.
Regulation (EU) 2016/424 on <b>Cableways Installation</b>	Guaranteeing a high level of protection of human health and safety.
Regulation (EU) 2016/426 on <b>Gas Appliances</b>	Setting a high level of protection of human health and safety, safety of animals and property and for sensible energy use.
Regulation (EU) 2017/745 on <b>Medical Devices</b>	Improving patient safety by introducing more stringent procedures for conformity assessment and post-market surveillance.
Regulation (EU) 2017/746 on <b>In vitro Diagnostic Medical Devices</b>	Improving patient safety by introducing stricter procedures for conformity assessment and post-market surveillance.
Regulation (EU) 2018/858 on the <b>Approval and Market</b>	Ensuring a high level of human health and safety and environmental protection.

Legislative Actions	Consumer benefits
<b>Surveillance of Motor Vehicles</b>	
Proposal for a Compliance and Enforcement Regulation, COM (2017) 795	Ensuring that industrial products meet requirements for safety or consumer information required by EU legislation.

### 2.3.5. RAPEX

Article 12 of the Product Safety Directive<sup>86</sup> establishes a European Union Rapid Information System (RAPEX) for the exchange of information between the Member States and the Commission on measures and actions taken with regards to products posing a serious risk to the health and safety of consumers. RAPEX helps to prevent and restrict the supply of products posing a serious risk to health and safety, as well as to other relevant public interests. It enables the Commission to monitor the effectiveness and consistency of market surveillance and enforcement activities in the Member States.

The directive requires the guidelines to be updated regularly in light of new developments. The Commission Implementing Decision of 9 November 2018 is the latest update of the guidelines, which takes into account the development of new tools for the proper functioning of RAPEX (wikis, the interface between RAPEX and other market surveillance systems). Those new developments made the criteria for the RAPEX notification unclear. The 2018 update to the guidelines clarifies the notification techniques and the follow-up instruments to be used.

### 2.3.6. The current work of the EP on dual quality of goods

The practice of marketing products in some Member States with the same or a similar brand name and packaging but with different characteristics than in other Member States has been subject of the discussion of EU bodies in the last years. Since the Unfair Commercial Practices Directive does not explicitly ban this practice, this has been considered lawful as long as the composition of the products was properly labelled. However, a number of tests in Member States haven proven differences of various magnitudes (e.g. in composition and the ingredients used) between products which are advertised and distributed in the single market under the same brand and with seemingly identical packaging, to the detriment of consumers. Therefore, in 2017 the Commission introduced a notice laying down criteria that national authorities in Member States could use, on a case-by-case basis, to find out whether this practice was unfair and therefore not allowed.<sup>87</sup>

With the New Deal for Consumers, the proposed Directive as regards better enforcement and modernisation of EU consumer protection rules also tackles the practice of dual quality of goods by amending Art. 6 of the Unfair Commercial Practices Directive. Dual quality of products would be added to the list of misleading commercial practices, but not to the list of commercial practices that are considered unfair in all circumstances. National authorities could therefore decide whether or not these practices are illegal on a case-by-case basis.

<sup>86</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

<sup>87</sup> Commission notice of 26 September 2017 on the application of EU food and consumer protection laws to issues of Dual Quality of products, COM (2017) 6532 final.

The EP published an own-initiative report of the IMCO Committee on dual quality of products in the single market on 19 July 2018,<sup>88</sup> which was adopted on 13 September 2018. In this report, the EP welcomes the New Deal for Consumers proposal but also highlights that the proposal would contain some unclear provisions that require clarification. The EP furthermore suggests to rather amend Annex I of the Unfair Commercial Practices Directive by introducing another item onto the 'blacklist' defining the practices prohibited in all circumstances, that explicitly mentions dual quality of identically branded products when discriminatory and not respecting consumer expectation. This suggestion was approved by the EP on 28 January 2019 in its amended proposal.<sup>89</sup>

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<sup>88</sup> European Parliament resolution of 13 September 2018 on dual quality of goods in the single market (2018/2008(INI)).

<sup>89</sup> European Parliament report of 28 January 2019 on the proposal for a directive as regards better enforcement and modernisation of EU consumer protection rules.

### 3. THE FUTURE POTENTIAL OF CONSUMER PROTECTION

#### KEY FINDINGS

Accelerating technological developments stimulate change and inspire the introduction of new measures in consumer law. The developments with the greatest impact, which are profoundly reshaping the EU market and creating new challenges for the consumer protection policy, include: the platformisation of the economy, the fading relevance of the consumer – business distinction, the possibilities created by automated and personalised protection, and the use of algorithms and AI. At the same time, technological developments also escalate concerns about the impact that humans and the economy have on the environment. These concerns should also be a driver for shaping the new paradigms of EU consumer protection measures.

The increasing density of the EU legislation necessitates legislative strategies and measures that ensure the inner coherency and proper structure of the EU legislation. The rising number of EU legal acts, as well as their growing complexity and innovative nature, require the EU legislator to take these factors into consideration, allowing the Member States to transpose and implement EU law with the expected efficiency.

#### 3.1. New challenges for EU legislation

##### 3.1.1. Technology-based legitimacy of the EU

Accelerating technological progress inevitably triggers development of legal instruments. The 7<sup>th</sup> and 8<sup>th</sup> legislative periods have witnessed a particularly intensive increase in technological progress with a profound impact on the market, exerting long-lasting and continuing influence on the law-making conditions.

Like all legislation, EU law aimed at enhancing the position of consumers in the market should follow and reflect market developments. The trends driving the development of the EU market (the platform economy, digitalisation, data flow, etc.) are global in nature. Although their consequences influence each and every Member State, an effective legislative answer can only be given at the EU level. This provides a very strong foundation for the EU's legislative initiatives, in accordance with the subsidiarity principle. Considering the global economy and the global players engaged, the desired effects cannot be achieved at a national level with a comparable level of effectiveness. This means that, due to the changes in the market structure and functioning, the EU has gained unprecedented economy and technology-based legitimacy.

##### 3.1.2. New challenges for the EU legislative process

Assuming that the EU will be inclined to make use of its unique position in the global context, this situation creates new challenges for the EU legislative process.

First, the profile of the EU legislation will change. Instead of focusing efforts on harmonising the existing national laws, the EU will more and more enter into areas without prior national legislation (the Digital Content Directive might serve here as an example). That means that it will become increasingly difficult for the Member States to predict the effects that EU legislation will have on the national legal systems, as well as to identify the measures that ensure the effective implementation of EU law.

Second, the density of EU legislative framework is increasing rapidly. Taking into account the number of EU legal acts already in force, and the number of the acts in the legislative pipeline, it becomes evident that the legislative environment of the European Union requires careful co-ordination. This need can be ascertained from various perspectives: ensuring co-ordination among the EU acts (as well as coordination among various branches of law), but also between EU law and the national legal systems. As the number of the EU acts grows, the efficiency of EU law should not decrease.

## 3.2. The market driving trends

The following part presents the most important trends that are currently driving market development in the EU and should be taken into consideration when establishing EU legislative policy in the area of consumer protection. As relative market novelties, they are not yet fully reflected in EU legislation, although certain proposals have already been made.

### 3.2.1. Online platforms and the new market structure

Online platforms, where consumers can obtain goods, services and digital content, or simply screen the market looking for the best potential contract partners, have changed the structure and the functioning of the EU market in a relatively short time.

The changes include replacing the bilateral structure of contractual relations with a triangle structure, where two-sided markets are replaced with multisided markets. The supply side and the demand side meet and communicate with each other through the platform, whereas the platform operator provides the parties with the technical infrastructure, and also very often sets terms and conditions according to which the parties engage in contractual relations. In principle, both sides – the suppliers as well as the customers – must conclude a contract with the platform operator in order to be able to subsequently conclude a contract with each other.

The most evident questions brought by the platformisation of the market are how to address the position of the platform operator, who might be seen as a quasi-legislator, as it is the platform operator who sets the rules for the market it organises. The position and the influence that the platform operator has on the way the platform functions also provoke questions as to whether, and if so to what extent, the platform operator should bear liability for the non-performance of contracts concluded via the platform. The position of the platform operator can hardly be reduced to that of an ordinary party to a contract in a triangular relation, as the advantages it enjoys over the platform users place the platform operator closer to that of a market organiser. This issue should certainly be considered also from the competition law point of view, as the platforms have instruments in place to reduce competition on the market, having access to the transactional data of the traders. The case law, which is beginning to develop in relation to the operation of platforms, and in particular the Uber cases, also suggests that it is important to define what the prerequisites are that decide whether a platform indeed represents the triangle relation between the platform, the suppliers and the customers, and when the platform infrastructure is used to disguise a bilateral relation, in attempt to exclude the liability of the trader organising the platform.

Another aspect of the platform-driven economy is that the position of the two groups of users against the platform does not really depend on their status established in accordance with the trader v. consumer distinction (this problem is looked at further in point 3.2.2 below).

The EU has already started to deal with the consequences of platformisation. The proposed directive on better enforcement and the modernisation of EU consumer protection rules,<sup>90</sup> constituting part of the “New Deal for consumers”, proposes changes to the Consumer Rights Directive and the Unfair Commercial Practices Directive that address some of the issues that consumers must face when engaging on a platform.

Addressing the platform economy more directly, on 26 April 2018 the Commission put forward a proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services.<sup>91</sup> The Explanatory Memorandum to the proposal explains that, due to the dependence of businesses on certain online services, the providers of platforms are able to engage in potentially harmful trading practices that limit business users’ sales and undermine their trust. It specifically points out the unexplained changes in terms and conditions without prior notice; the delisting of goods or services and the suspension of accounts without a clear statement of reasons; a lack of transparency related to the ranking of goods and services and of the undertakings offering them; unclear conditions of access to, and the use of, data collected by providers; and a lack of transparency regarding favouring the providers’ own competing services and most-favoured nation (MFN) clauses that restrict the undertakings’ ability to offer more attractive conditions through other channels than online intermediation services.

The proposal also deals with ranking systems, explaining that they have an important impact on consumer choice and the commercial success of corporate website users. Thus, even in the absence of a contractual relationship with their corporate website users, online general search engines exhibit a dependency-enabled issue, specifically for potentially harmful ranking practices that may affect business users.

The Memorandum explains that the current regulatory framework may not be effective in preventing certain harmful practices, as well as in providing effective redress. Further, the emerging regulatory fragmentation in the EU complicates the regulatory environment. According to the Commission, while it primarily impacts business users, it also affects all actors in the multi-sided online platform ecosystems, including consumers, which could face a reduced choice of competitive goods and services.

The text of the proposal was agreed on 14 February 2019 and is currently pending confirmation by the COREPER and the IMCO Committees.

### 3.2.2. The fading relevance of the consumer – trader distinction

EU legislation is still very strongly based on the dichotomic distinction of consumer v. trader, where the consumer is defined as the one having a structurally weaker position against the trader, due to unequal access to information and relative lack of negotiating power when dealing with the trader. Distinguishing between consumer relations (B2C) and professional relations (B2B) is based on the assumption that B2B relations are characterised (unlike B2C relations) by a more balanced position of the parties, in terms of both: the information access and the negotiating power.

The process of market digitalisation, as well as (and maybe in particular) the platformisation of the market verifies these assumptions in relation to B2C as well as B2B relations.

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<sup>90</sup> Brussels, 11.4.2018 COM(2018) 185 final.

<sup>91</sup> Brussels, 26.4.2018 COM(2018) 238 final.

When it comes to consumers, the widespread and increasing (also due to EU policies) internet access allows consumers to balance the informational inequality, as the analysis of market information becomes cheaper, faster and easier. To strengthen this tendency, it is vital to ensure not only proper internet access, but also to secure that websites offering comparisons of products, function in an unbiased and transparent way, and that consumers can trust them. In the context of internet trade, consumers enjoy an improved position also thanks to the right of withdrawal, which allows them to step back from almost any contract concluded with traders on the internet. In addition, it seems that (at least some of) the platforms try to elevate the consumer protection standard, sometimes at the expense of the suppliers.

At the same time, the market developments impact the status of traders. The position of an SME against a big(ger) company is characterised by very similar disproportionalities as in consumer relations. The relations that exist on online platforms provide a very good example here.<sup>92</sup> The factual position of a trader against the platform operator is usually no different than the position of a consumer. This tendency has been already noticed by the European Parliament in a context of different relationships. In its resolution of 12 September 2017 on the functioning of franchising in the retail sector<sup>93</sup> the Parliament noted that franchisees are often the weaker contracting party, especially when they are SMEs, as the franchise formula has normally been developed by the franchisor, and as franchisees tend to be financially weaker, so may consequently be less well-informed than the franchisor and more dependent on the expertise of the franchisor.

However, consumers enjoy widespread protection under EU law (in particular: the Consumer Rights Directive, the Unfair Contract Terms Directive, the Unfair Commercial Practices Directive and the Consumer Sales Directive, with more coming in the future), while traders may only rely on the protection granted by national legislation (also in the more and more frequent cross-border situation). If the platform operator acts not only as the platform organiser, but also offers its own goods and services on the platform, then the position of traders operating on the platform is additionally jeopardised by the fact that the platform, their direct competitor, has access to a vast amount (if not all) transactional data that the traders produce.

Another aspect of the consumer trader distinction is that, in practice, it is increasingly difficult to establish whether a given person has the status of a consumer, or whether the status has already changed to that of a trader. In a recent case, C-105/17 of 4 October 2018, the CJEU established that a natural person who publishes a number of advertisements on a website offering new and second-hand goods for sale can be classified as a “trader”, but that such an activity can constitute a “commercial practice” only if that person is acting for purposes relating to his trade, business, craft or profession, this being a matter for the national courts to determine, in light of all the relevant circumstances of the individual case. Therefore, the border between consumer and trader remains blurred and subject to national interpretation. This causes uncertainty regarding whether or not a given person enjoys protection granted by the consumer *acquis*, and whether or not this person is burdened with duties and obligations as a trader against its consumer counterparts.

At the same time, while the definition of consumer is traditionally based on the criteria of a natural person acting for purposes outside his trade, business, craft or profession, there are several instances (in consumer- as well as market-oriented instruments), that extend that notion.

<sup>92</sup> See, for example, Legal Study on Unfair Commercial Practices Within B2B e-markets, ENTR/04/69 of May 2006 presented by the Commission.

<sup>93</sup> 2016/2244(INI).



Table 6: Personal Scope of Protection in EU legislation

Legislative Act	Personal scope of protection	Possibility of extension
Consumer Rights Directive	<p>Consumer, recital 17, Article 2(1): any natural person who, in contracts covered by this Directive, is acting for purposes that are outside his trade, business, craft or profession.</p> <p>Recital 17: 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.</p>	-/-
Directive on Alternative Dispute Resolution	Consumer, recital 18, Article 4(1)(a): any natural person who is acting for purposes that are outside his trade, business, craft or profession	-/-
Mortgage Credit Directive	Consumer, recital 12, Article 4 (1): a natural person who, in transactions covered by this Directive, is acting for purposes that are outside his trade, business or profession	The scope of application may be extended (recital 13).
New Package Travel Directive	"Traveller", recital 7, Article 3(6): any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of this Directive. (→ often, but not necessarily a consumer)	The scope of application may be extended (recital 21).
Proposal for a Digital Content Directive (Proposal 2015/0278 (COD) – COM/2015/634 final	Consumer, Article 2(4): any natural person who, in contracts covered by this Directive, is acting for purposes that are outside that person's trade, business, craft, or profession	-/-
Online and other distance sales of goods (Proposal 2015/0288 (COD) – COM/2017/0637 final)	Consumer, Article 2(b): any natural person who, in contracts covered by this Directive, is acting for purposes that are outside his trade, business, craft or profession	-/-

Legislative Act	Personal scope of protection	Possibility of extension
Free flow of non-personal data (Proposal 2017/0228 (COD))	"User", Article 3(7): a natural or legal person including a public sector entity, using or requesting a data storage or other processing service	-/-
e-Privacy (Proposal 2017/0003 (COD))	"End-user", Article 4(1)(a): reference to the definition in the directive establishing the European Electronic Communications Code	-/-
Proposal for a directive on representative actions for the protection of the collective interests of consumers (Proposal 2018/089 (COD) – COM/2018/0184 final)	"Consumer", Article 3(1): any natural person who is acting for purposes that are outside their trade, business, craft or profession	The scope of application may be extended (Article 1 (2)).
Proposal for a directive as regards better enforcement and modernisation of EU consumer protection rules (Proposal 2018/0090 (COD) – COM/2018/185 final)	"Consumer", as defined e.g. in the Consumer Rights Directive	-/-
Proposal for a regulation on a Pan-European Personal Pension Product (PEPP) (Proposal 2017/0143 (COD) – COM/2017/0343 final)	"Customer" as "PEPP saver", Article 2(3)(b): a customer within the meaning of Directive 2002/92/EC of the European Parliament and of the Council 42, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU	-/-
Insurance Distribution	"Consumer", in several recitals and articles, no definition or reference	-/-

Legislative Act	Personal scope of protection	Possibility of extension
Directive 2016/97/EU (IDD)		
Payment Services Directive 2 2015/2366/EU (PSD 2)	"Consumer", Article 4 (20): a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his or her trade, business or profession	-/-
Regulation (EC) 924/2009 on charges for cross-border payments in euro	"Consumer", Article 2(11): a natural person acting for purposes other than his or her trade, business or profession	-/-
SEPA Regulation (EU) 260/2012	"Consumer", Article 2(24): a natural person acting for purposes other than trade, business or profession in payment service contracts	-/-
Regulation 2015/751 on multilateral interchange fees	"Consumer", Article 2(3): a natural person who, in payment service contracts covered by this Regulation, is acting for purposes other than the trade, business or profession of that person	-/-
Directive 2014/92/EU on comparable and transparent fees for all payment accounts and payment account switching	"Consumer", Article 2(1): any natural person who is acting for purposes that are outside his trade, business, craft or profession	The scope of application may be extended (recital 12, Art. 1 (6))
European Market Infrastructure Regulation 648/2012 (EMIR)	"Client", Article 2(15): an undertaking with a contractual relationship with a clearing member of a CCP that enables the undertaking to clear its transactions with that CCP	-/-
Benchmark Regulation (EU) 2016/1011	"Consumer", Article 3(21): a natural person who, in financial contracts covered by this Regulation, is acting for purposes that are outside his or her trade, business or profession	-/-

Legislative Act	Personal scope of protection	Possibility of extension
Markets in Financial Instruments Directive II 2014/65/EU	"Client", Article 4(9): any natural or legal person to whom an investment firm provides investment or ancillary services	-/-
Markets in Financial Instruments Regulation (EU) 600/2014	"Client", Article 2(7): as defined in Article 4(1)(9) of Directive 2014/65/EU	-/-

At the same time, both the European Parliament and the Commission began to explore how far the market situation necessitates the introduction of legislation in the B2B context. In the online platforms framework, the Commission has already put forward a specific legislative proposal for a regulation on promoting fairness and transparency for business users of online intermediation services.<sup>94</sup> The Commission has also acted regarding the unfair trading practices in business-to-business relationships, proposing a directive on unfair trading practices in business-to-business relationships in the food supply chain.<sup>95</sup>

The European Parliament, in its resolution of 12 September 2017 on the functioning of franchising in the retail sector,<sup>96</sup> pointed to the need for specific principles to ensure there were balanced contractual rights and obligations of the parties, such as clear, correct and comprehensive pre-contractual information, including information on the performance of the franchise formula, both general and targeted towards the franchisee's envisaged location, and clear limits concerning confidentiality requirements, to be available in writing and with sufficient notice prior to signing the agreement, and the introduction of a cooling-off period after signing the agreement, where appropriate. The Parliament also stressed the need for continued commercial and technical assistance from the franchisor to the franchisee for the duration of the agreement, if needed.

### 3.2.3. Algorithms and AI applications

Machine learning, also known as algorithms or artificial intelligence (AI), is being increasingly employed by businesses and governments. The use of machine learning has a crucial impact on everyday life, and significantly extends beyond the traditionally perceived consumer law. It includes, for example, decisions about criminal sentencing, medical treatment, eligibility for welfare benefits, the choice of entertainment, the price and availability of goods and services online and the political information to which individuals are exposed.<sup>97</sup>

<sup>94</sup> COM(2018) 238 final, Brussels 26.4.2018.

<sup>95</sup> Brussels, 12.4.2018 COM(2018) 173 final.

<sup>96</sup> 2016/2244(INI).

<sup>97</sup> L. Edwards, Michael Veale, Enslaving the Algorithm: From a "Right to an Explanation" to a "Right to Better Decisions"?, IEEE Security & Privacy (2018) 16(3).

The Commission explains that AI includes systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals.<sup>98</sup>

There are several serious issues that arise on the basis of the use of machine learning for consumer relations. The algorithms use historical data, which means that there is a risk that they will simply replicate the “unwanted pattern of unfairness and discrimination”.<sup>99</sup> Because the ML algorithms are developed by mathematical techniques, without human intervention, the outcome that they provide can create challenges for consumers when it comes to knowing the reasons and understanding how such an outcome was achieved, and how it is possible to change or challenge it (creating a “black box society”<sup>100</sup>). The question that arises, therefore, is whether the right to an explanation, like in Article 15 of the GDPR, is the right direction in which to address these concerns, or whether there should be more specific and further reaching actions, possibly involving control by public authorities.

The AI related issues are already present on the European agenda. On 10 April 2018 25 Member States signed a Declaration of cooperation on Artificial Intelligence, agreeing to work together on the most important issues raised by AI, from ensuring Europe’s competitiveness in the research and deployment of AI, to dealing with social, economic, ethical and legal questions. Likewise, both the European Parliament and the Commission are actively investigating the subject and the possible initiatives in the area.

On 27 January 2017, the European Parliament adopted a report on Civil Rules on Robotics.<sup>101</sup> The Committee on Legal Affairs (JURI) held a public consultation later, on the future of robotics and artificial intelligence that focused on how to address the ethical, economic, legal and social issues related to robotics and AI developments. Based on the recommendations in the report, the European Parliament adopted a resolution on 16 February 2017<sup>102</sup> on Civil Law Rules on Robotics. It recognized that machine learning offers enormous economic and innovative benefits for society by vastly improving the ability to analyse data, while also raising challenges when it comes to ensuring non-discrimination, due process, transparency and understandability in decision-making processes. The Parliament called on the European Commission to assess the impact of AI and made wide-ranging recommendations on civil law rules on robotics. In June 2018 the Industry, Research and Energy (ITRE) Committee launched an own-initiative-report on “A Comprehensive European industrial policy on artificial intelligence and robotics”, which was adopted on 14 January 2019. The report dealt with the potential of AI, machine learning, big data and robotics, as well as issues related to the personalised healthcare, called on the Commission to work on policies and strategies that can position the EU as a world - leader of health care technology and stressed the importance of the clear disclosure policy, when it comes to AI. On 12 February 2019 the Parliament adopted a resolution on a comprehensive European industrial policy on artificial intelligence and robotics.<sup>103</sup>

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<sup>98</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Artificial Intelligence for Europe, Brussels 25.4.2018, COM(2018) 237 final.

<sup>99</sup> L. Edwards, Michael Veale, Enslaving the Algorithm: From a “Right to an Explanation” to a “Right to Better Decisions”?, IEEE Security & Privacy (2018) 16(3).

<sup>100</sup> F. Pasquale, The Black Box Society: The Secret Algorithms that Control Money and Information, Harvard University Press, 2015.

<sup>101</sup> 2015/2103(INL).

<sup>102</sup> 2015/2103(INL).

<sup>103</sup> 2018/2088(INI).

The Parliament took under consideration a very comprehensive selection of issues relating to a society supported by artificial intelligence and robotics, like labour in the era of artificial intelligence or robotics and malicious use of artificial intelligence and fundamental rights.

The resolution moreover dealt with the technological path towards artificial intelligence and robotics: research and development, investments, innovation, societal acceptance and responsibility; the supporting conditions: connectivity, data accessibility and high-performance computing, cloud infrastructure and industrial policy. Further, the resolution identified the priority sectors (public sector, health, energy, transport, agriculture and the food chain), and paid particular attention to cybersecurity and SMEs. It also engaged into discussion on the legal framework for artificial intelligence and robotics, in the context of the internal market, personal data and privacy, liability issues, consumer protection and empowerment, intellectual property rights as well as ethical aspects (human-centric technology, ethical-by-design, limits to the autonomy of artificial intelligence and robotics, transparency, bias and explainability of algorithms). The Parliament called on the Commission to work towards developing strong EU leadership to prevent duplication and fragmentation of efforts and ensure coherent national-level policies and the exchange of best practices for wider usage of AI.

The European Commission has touched upon AI already in the Communication New Deal for Consumers. It stressed that, while AI brings major opportunities for consumers, it can raise challenges related to (i) the complexity and the potential lack of transparency of these technologies, (ii) the users' lack of control over the data they generate, and (iii) questions related to discrimination, bias, safety and liability for damage. More specific actions were announced in the Communication, Artificial Intelligence for Europe, adopted on 24 April 2018.<sup>104</sup> The Commission declared that AI-enabled tools in business-to-consumer transactions must be fair, transparent and compliant with consumer legislation. Consumers should receive clear information on the use, features and properties of AI-enabled products. Individuals should be able to control the data generated by using these tools and should know whether they are communicating with a machine or another human. In particular, when interacting with an automated system, consideration should be given to when users should be informed on how to reach a human and how to ensure that a system's decisions can be checked or corrected.

The Commission announced a number of actions, focussed around three pillars: increasing public and private investments (increasing investments in AI under the 2020 research and innovation programme - 1.5 billion Euros by 2020 - and committing to new funding under the next EU multiannual financial framework 2021-2027), preparing for socio-economic changes brought about by AI on the labour market and in the field of education; and ensuring an appropriate ethical and legal framework. In particular, the Commission will propose several legislative and non-legislative actions to ensure an appropriate technical and legal framework for AI: draft of AI ethics guidelines by the end of 2018; issue a guidance document on the interpretation of the Product Liability Directive by mid-2019; undertake studies and research and formulate policy responses to the challenges posed by AI in the field of liability, safety, Internet of the things (IoT), robotics, algorithmic awareness, consumer and data protection; propose a coordinate plan with Member States in order to maximise the impact of investment into AI (by end of 2018) and address legal and ethical consideration; set up a European AI Alliance including businesses, consumer organisations, trade unions, and other representatives of civil society bodies (by July 2018) to gather input, exchange views and develop common measures to encourage the development of AI and implementing a pilot project proposed by the European

<sup>104</sup> Brussels, 25.4.2018 COM(2018) 237 final, COM(2018) 238 final, Brussels 26.4.2018, p. 1.

Parliament on Algorithmic Awareness-Building (the call for tenders was announced by the Parliament on 18 July 2017).

In June 2018 the Commission appointed 52 experts to a new High Level Group on Artificial Intelligence that gathers representatives from academia, civil society and industry. The objective of the Group is to support the implementation of the European strategy on AI. The Group published first draft of the ethical guidelines in December 2018.

Further, in December 2018, the Commission published plan on Artificial Intelligence aiming at coordinating the approaches in the Members States with respect to the national AI strategies objectives, the financing mechanisms available and the legislative work.

#### 3.2.4. Personalisation

New technological developments such as big data algorithms enable personalised practices that can be also employed in consumer relations. While the full potential of personalisation and personalised protection has not been established yet, it should be remembered that it also brings with it challenges from the perspective of consumer protection, especially from the point of view of the personal data use, discrimination and undue market influence.

The use of algorithms and big data allows for personalised practices online to be developed, with a potential impact on the non-digital world. Personalisation is a tool allowing individual preferences and needs of consumers to be addressed. It can be used to shape the various aspects of the relation between consumer and trader, and also to individualise and increase the efficiency of rules that aim to protect consumers (in particular informational duties).

The most obvious use of technology that allows personalisation is in the form of personalised advertising. A consumer market study published on 19 July 2018 at the Commission's request, dealing with the nature and prevalence of online personalised practices, concludes that online targeted advertising is the most prevalent online personalisation practice.<sup>105</sup> When it comes to consumers' awareness and perception of such practices and problems experienced, the conclusion is that consumers see both benefits and disadvantages of online personalisation. Consumers are of the opinion that targeted advertising, which allows them to see products that they might be interested in, is the main benefit of personalisation. At the same time, they are concerned about their personal data being used, or not knowing with whom this personal data is shared.<sup>106</sup>

Personalisation can similarly be used to reshape the informational disclosure duties of the traders. Depending on the consumer's profile and perception capabilities, personalisation might contribute to serving consumers with less information that is at the same time more precise, and therefore enabling them to make informed and meaningful choices.<sup>107</sup> Here, the potential of limiting or perverting the reality in the eyes of the consumer is present.

However, personalisation can very easily culminate in discrimination. This is not only the case when the system starts to differentiate between individuals on the basis of socially unacceptable factors. As the consumer only sees their own personalised information, shop front, etc., he or she might be unaware that personalisation is taking place. While personalisation seems to be more suitable and more meaningful for the individual in the first place, it can also lead to the consumer's choice being limited and offering less freedom, because the consumer is directed (unconsciously) to a certain path.

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<sup>105</sup> Consumer market study on online market segmentation through personalized pricing/offers in the European Union, Final Report, 2018.

<sup>106</sup> Consumer market study on online market segmentation through personalized pricing/offers in the European Union, Final Report, 2018.

<sup>107</sup> Busch, Implementing Personalized Law: Personalized Disclosures in Consumer Law and Privacy Law, 2018.



Profiling and targeting create the risk of a consumer being crammed into a narrow spectrum of advertisements that do not accurately reflect the consumer's full range of interests.

The developing technology also provides other means that allow for more personalised contact with consumers. The use of e-receipts (which are being developed anyway for tax purposes) can enable retailers to transmit personalised information to the consumer, even when the sale was concluded in a non-digital environment. E-receipt schemes create a channel through which personalised advertisements or offers could be made for consumers,<sup>108</sup> and information on the transaction in a selected language could be provided to them.<sup>109</sup>

### 3.2.5. Law & Ecology

Due to the effects that economic development has on the environment, leading to pollution and climate changes, the EU environmental policy is of a great magnitude and most certainly will have an increasingly important impact on other European policies, including the area of consumer protection. The importance of protecting the environment is strongly recognised by the European citizens, for 94% of whom this is a personally important subject.<sup>110</sup> In the eyes of the Europeans, climate change (51%), air pollution (46%) and the growing amount of waste (40%) are the most important environmental issues. Eighty-one per cent of Europeans agree that environmental issues have a direct effect on their daily life and their health, 74% are worried about the impact that everyday products made of plastic have on their health, while an even greater proportion (87%) are worried about the impact of plastic products on the environment. Similarly, 84% of Europeans are worried about the health impact of chemicals present in everyday products, while 90% are worried about their impact on the environment.

Most Europeans feel that they have a personal role to play in protecting the environment, but think that people, governments, institutions and businesses all need to do more. Eighty-seven per cent of Europeans agree that, as individuals, they can play a role in protecting the environment in their country (a figure that has remained consistent over time since the Eurobarometer 2007 survey). According to the 2016 Eurobarometer, there is support for stricter legislation to tackle environmental problems, with 35% of Europeans favouring investment in research and development to find technological solutions, 34% supporting tighter legislative control, specifically introducing heavier fines for breaches of environmental legislation, 31% for ensuring better enforcement of legislation, and 30 % for introducing stricter environmental legislation.

The EU recognises these concerns. The EU environmental legislation in place has already significantly contributed to reducing air, water and soil pollution, restricting the use of toxic and hazardous substances. The long-term environmental policy of the European Union is ambitious. As the Commission declared in the 7th Environment Action Programme to 2020 'Living Well, Within the Limits Of Our Planet', which entered into force in 2014, the vision of the year 2050 that is intended to help guide action up to and beyond 2020 is the following: "In 2050, we live well, within the planet's ecological limits. Our prosperity and healthy environment stem from an innovative, circular economy where nothing is wasted, where natural resources are managed sustainably, and where biodiversity is protected, valued and restored in ways that enhance our society's resilience. Our low-carbon growth has long been decoupled from resource use, setting the pace for a safe and sustainable global society."

<sup>108</sup> Study for the IMCO Committee, European Digital Guarantee, 2016, p. 61.

<sup>109</sup> Study for the IMCO Committee, European Digital Guarantee, 2016, p. 48.

<sup>110</sup> Attitudes of European citizens towards the environment, Special Eurobarometer 468, October 2017.

The current Environmental Action Programme (EAP) proposes to tackle the environmental challenges in a structured way, setting out three key objectives: (1) to protect, conserve and enhance the Union's natural capital; (2) to turn the Union into a resource-efficient, green, and competitive low-carbon economy; (3) to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing. These objectives are to be achieved through better implementation of legislation, better information by improving the knowledge base, more and wiser investment for the environment and climate policy, and full integration of environmental requirements and considerations into other policies.

On 28 November 2018, the Commission presented the communication "A Clean Planet for all, a European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy",<sup>111</sup> which reveals the long-term strategy for achieving a competitive and climate-neutral European economy by 2050. The strategy proposes to bring about climate neutrality by investing into realistic technological solutions, empowering citizens, and aligning action in key areas such as industrial policy, finance and research – while ensuring social fairness for a just transition. It covers nearly all EU policies and is in line with the Paris Agreement objective to keep the global temperature increase to well below 2°C and to pursue efforts to keep it to 1.5°C.

An in-depth analysis supporting the Commission's Communication of 2018 explains (pp. 252-254) the impact that consumer choices have on achieving the assumed aims. It points to the fact that the demand-side solutions related to consumer choices are powerful tools that can be used to reduce the carbon footprint of the economy, with clear potential for co-benefits to citizens themselves and society as a whole. Consumer choices impact the emissions profile directly (an example of the move towards reduction is a visible trend towards greater use of walking, cycling and public transport, as well as sharing vehicles rather than vehicle ownership among younger people, particularly in urban areas; an example of increases is high demand for long-distance travel, notably aviation, which with increasing welfare, will likely continue to increase).

To achieve the transformation, the report suggests moving consumer needs and rights into the centre of policy discussions. The questions that need to be answered relate to how to reduce barriers that can hamper the market uptake of low-carbon solutions that can have multiple other benefits, whether in transport or in the construction and food sectors, and how to spur social innovation that can alter lifestyles towards reducing the carbon footprint.

The report considers "soft" (information campaigns and labelling programmes) as well as "hard" measures (removing inefficient technologies from the market, which would often be to the detriment of consumer welfare in the longer term). It stresses (p. 254) that in the future, policy making will have to look at how to engage citizens with appropriate economic and fiscal instruments, creating a positive environment that not only better informs about the various options and benefits, but also addresses externalities, encourages purchasing decisions towards lower carbon content products, as well as designing standards and norms that will benefit society as a whole.

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<sup>111</sup> Brussels, 28.11.2018 COM(2018) 773 final.

Table 7: EU Environmental Legislation

Legislative Act	Status	Content and Purpose
COM (2013) 169 final Green Paper – A 2030 framework for climate and energy policies	published	A 2030 framework for climate and energy policies, contains list of relevant policies in the Annex
COM (2014) 15 final A policy framework for climate and energy in the period from 2020 to 2030	In the implementation process	Sets out a policy framework and names priorities and goals
COM (2015) 80 final A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy	In the implementation process	Sets out the strategy behind the EU's proposed energy union package.
COM (2016) 860 final Clean Energy For All Europeans		Known as the Clean Energy Package, aims to create an Energy Union
COM (2017) 646 final Two years after Paris – Progress towards meeting the EU's climate commitments		Reporting the progress towards meeting the EU's climate commitments, required under Article 21 of Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC
COM (2018) 28 final A European Strategy for Plastics in a Circular Economy	In the implementation process	Foundations to a new plastics economy, where the design and production fully respect reuse, repair and recycling needs and more sustainable materials are developed and promoted.
COM (2018) 773 final A Clean Planet for all – A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy	In the implementation process	Long-term strategy to achieve net-zero greenhouse gas emissions by 2050 through a socially-fair transition in a cost-efficient manner.
Directive 2011/65/EU Restriction of the use of certain hazardous substances in electrical and electronic equipment	In force	A recast legislation, updates Directive 2002/95/EC that restricted the use of certain hazardous substances in EEE by,

Legislative Act	Status	Content and Purpose
		among other things, extending restrictions in the use of hazardous substances to a wider range of EEE.
Directive (EU) 2017/2102 Amending 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment	In force	Exclusion of pipe organs and non-road mobile machinery with a traction drive powered by an external power source;  Lifting the prohibition on secondary market operations;  Exemption for reused spare parts, recovered from EEE;  Timeline for the adoption of its decision on granting, renewing or revoking an exemption within one month
Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC	In force	Establishes a common framework for the promotion of energy from renewable sources.  Aims to achieve by 2020 a 20% share of energy from renewable sources in the EU's final consumption of energy and a 10% share of energy from renewable sources in each Member state's transport energy consumption.
Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products	In force	Framework for minimum eco-design requirements that must be met by goods that consume energy before they can be used or sold in the EU.
Decision 1386/2013/EU on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'	In force	The 7th Environment Action Programme (EAP) that will guide European environment policy until 2020.
Directive (EU) 2015/1513 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources	In force	Aims to start the transition from conventional biofuels to biofuels that deliver substantial greenhouse gas savings ("advanced/second generation biofuels").  Establishes a clear legislative framework for the production of biofuels, while

Legislative Act	Status	Content and Purpose
		protecting existing investments in the sector.
Regulation (EU) 2017/852 on mercury, and repealing Regulation (EC) No 1102/2008	In force	Seeks to protect human health and the environment from mercury.
Directive 2010/31/EU on the energy performance of buildings	In force	<p>Aims to improve the energy performance of buildings in the EU, taking into account various climatic and local conditions.</p> <p>Sets out minimum requirements and a common framework for calculating energy performance.</p>
Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC	In force	<p>Update the Union's legal framework with respect to energy efficiency.</p> <p>Establishes a common framework for measures to promote energy efficiency in the Union with a view to pursuing the overall objective of the energy efficiency target of saving 20% of the Union's primary energy consumption by 2020 and of making further energy efficiency improvements after that date.</p>
Directive (EU) 2018/844 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency	In force	Review of the energy performance of buildings directive, amends Directive 2010/31/EU and Directive 2012/27/EU on energy efficiency.
Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU	In force	Sets out Member States' commitments in the area of land use, land-use change and forestry.
Regulation (EU) 2017/1369 setting a framework for energy labelling and repealing Directive 2010/30/EU	In force	Sets out the basis for labelling energy-related products, providing standard information about energy efficiency, as well as the consumption of energy and other resources, to help consumers in purchase decisions.

Legislative Act	Status	Content and Purpose
Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency	In force	Establishes a common framework of measures to promote energy efficiency within the Union in order to ensure that the Union's 2020 headline targets on energy efficiency of 20 % and its 2030 headline targets on energy efficiency of at least 32.5 % are met, paving the way for further energy efficiency improvements beyond those dates.
COM(2017) 676 final Proposal for a Regulation setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO <sub>2</sub> emissions from light-duty vehicles and amending Regulation (EC) No 715/2007	Discussion within the Council or its preparatory bodies	Aims to help meeting the objectives set out in the EU 2030 framework for climate and energy, which includes targets of an at least 40% cut in domestic EU GHG emissions compared to levels in the 1990s. The GHG emission reductions in the non-ETS sectors, which include road transport, will have to amount to at least 30% by 2030 compared to 2005.
COM (2018) 144 final Proposal for a Regulation on persistent organic pollutants	Awaiting 1 <sup>st</sup> reading in Parliament	Implements the commitments of the Union under the Stockholm Convention on Persistent Organic Pollutants approved by Council Decision 2006/507/EC and under the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants approved by Council Decision 2004/259/EC.
COM (2017) 653 final Proposal for a Directive amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport vehicles.	Discussion within the Council or its preparatory bodies	Aims to increase the market uptake of clean, i.e. low- and zero-emission vehicles, in public procurement, and hence to contribute to reducing overall transport emissions, and to competitiveness and growth in the transport sector.
COM (2018) 284 final Proposal for Regulation setting CO <sub>2</sub> emission standards for new heavy-duty vehicles.	Discussion within the Council or its preparatory bodies	While CO <sub>2</sub> emissions from heavy-duty vehicles (HDV), i.e. lorries, buses and coaches, account for about 6% of total EU emissions and 25% of road transport CO <sub>2</sub> emissions in the EU, they are currently not regulated at EU level.

Legislative Act	Status	Content and Purpose
COM (2018) 340 final Proposal for a Directive on the reduction of the impact of certain plastic products on the environment.	Discussion within the Council or its preparatory bodies	It aims to prevent and reduce plastic marine litter from single use plastic items and fishing gear containing plastic by complementing the measures already envisaged under the EU Plastics Strategy, addressing the identified gaps in the existing actions and legislation, and further reinforcing the EU's systemic approach to this issue.



## 4. CONCLUSIONS

### 4.1. The achievements 2009-2019

The 7th and 8th legislative periods brought about substantial achievements in the consumer protection area. The progress was achieved by adopting various categories of instruments: acts that directly target consumer relations, actions that are meant to increase the effectiveness of consumer protection and instruments that, while not straightforwardly addressing consumer issues, ultimately bring about benefits also for consumers.

The instruments that target consumer rights directly include the Consumer Rights Directive of 2011, the Mortgage Credit Directive of 2014, the Sea and Inland Waterway Travel Regulation, the Bus and Coach Transport Regulation and the Package Travel Directive of 2015. Two further proposals (drafts for a Digital Content Directive and for a Consumer Sale of Goods Directive) are in the final stages of the adoption process. The less advanced proposals put forward as a part of the “New Deal for Consumers” are: a proposal as regards the Better Enforcement and Modernisation of EU Consumer Protection Rules and a proposal on Representative Actions for the Protection of the Collective Interests of Consumers.

Increasing the effectiveness of consumer protection was the main aim of the Directive on Alternative Dispute Resolution for Consumer Disputes and the Regulation on Online Dispute Resolution for Consumer Disputes. The pending proposals in this area include proposals that strive to make institutional enforcement more effective, i.e. the new Consumer Protection Cooperation Regulation, and the Directive on Representative Actions for the Protection of the Collective Interests of Consumers.

The instruments that bring indirect benefits to European consumers include a vast number of legal acts developed as a part of the Digital Single Market initiative, as well as legislation that aims to create a fully functioning, transparent and safe financial EU market, product safety and market surveillance acts, including RAPEX and the recent attempts to tackle dual-quality products.

### 4.2. The future challenges

Technical developments, in particular by business models based on the internet and on telecommunication innovations such as smartphones and tablets need to be reflected in the considerations behind future EU policies directed at protecting EU consumers. Some of the developments (like the platformisation or AI use) are already present at the EU agenda. A careful forecast on the future trends of consumer law might suggest that also other trends will soon exert impact on the EU consumer policy. At a very general level, consumer law must find effective ways to address the increasing use of data (including personal data), not only in the context of “data as payment”, but also data used for profiling and targeting consumers, in a contract law perspective.

Another area that will exert more and more intensive impact on the consumer policy (as on all other EU policies) is integration of the environmental protection into the legislative choices of the EU law maker. What needs to be stressed here is that furthering the protection of environment has a very solid support of the European citizens.

In the context of the EU legislative policy, the increasing number of EU legal acts, as well as their increasing complexity call for coherence assurances, both among the EU legal acts, as well as between EU law and national laws.

#### 4.2.1. Market design by platform design

Consumer law will have to find an answer to the quickly developing platformisation of the economy. Until recently, nearly all instruments of consumer contract law just targeted bilateral situations where, for instance, an e-shop sells goods or provides services to consumers. Meanwhile platforms have become powerful actors in the market. The response of consumer law will probably be platform design. Consumer law is already starting to interfere with the design of platforms, and this will likely continue. The main example is the design of online reputation systems. Nearly all platforms run such systems, which are highly influential for the decisions of consumers. There is an intrinsic danger that these reputation systems are biased, if not misleading. Consumer law will have to ensure that reputation systems become reliable sources of information, thereby helping consumers to make informed decisions.

#### 4.2.2. Customer protection: fading market relevance of the consumer – trader distinction

The relevance of the distinction between consumers on the one side and traders on the other will fade. While the main example for this trend is platforms again, the more traditional market sectors also show similar symptoms. Consumer law is not very well adapted to the situation where consumers are not just buyers of goods or recipients of services, but are also offering goods or services. Moreover, many of the existing platforms do not distinguish whether their customers are consumers or not. It is also hard to argue that professionals, when ordering goods or services on a big platform, are in a substantially better position than consumers are. It is likely that in measures tackling platforms, the traditional distinction between traders and consumers will fade away.

#### 4.2.3. Monitoring of algorithms and AI applications (e.g. listings, credit rating, automated devices)

Consumer law will have to develop strategies for monitoring algorithmic data processing and artificial intelligence in cases where the outcome of such processing is of importance to consumers. A very example is an automated credit rating, where a computer decides whether the consumer can receive a loan or not. Even simple listings of the results of a search engine can be biased in a way that the interests of consumers are affected. Consumer law must ensure that service providers such as search engines, which consumers use to inform themselves before making a transaction, are not misleading. The latest proposals of the Commission in the field only rely on consumer information about the main parameters and their relevance for ranking search results. In the long run, this approach can only be a first step, since information on ranking parameters may be rather useless for consumers. Consumer law will have to build up infrastructure for regularly monitoring search engines and other applications in order to ensure that search results, listings, rankings and ratings are not misleading or discriminatory. Such monitoring will have to make use of algorithmic data processing. The real challenge to be tackled through automated decision-making with artificial intelligence is to create an equality of arms by also providing consumer protection authorities and consumer associations with the means to protect consumers effectively.

#### 4.2.4. Automated and personalised customer protection (e.g. information)

The Big Data based digitalisation of marketing and contract formation not only allows personalised advertisement and offers, but also enables automated and personalised protection of consumers. It is a core feature of online business models to build up personal profiles of customers. Until now, these profiles have mainly served the interests of traders. Consumer law might develop instruments that make use of these profiles in favour of consumers.

It is at least imaginable that platform operators, which anyway know a great deal about their customers, will be obliged to make use of this knowledge to protect their customers' interests. This may end up in personalised information duties. Examples are cases where the platform operator has specific knowledge of earlier transactions. If a travel agency knows from earlier bookings that the customer is a citizen of a certain state, the agency could have a duty to inform this customer about a specific visa requirement for citizens of this state. If an online shop registers that a customer orders toner for a printer, and knows that the same customer ordered a specific printer some time ago, it could be obliged to inform the customer that the toner ordered does not fit the recently purchased printer.

#### 4.2.5. Environmental concerns

A new, environment-oriented perspective will have to be implemented in the consumer policy area. The future EU policy-making will have to undertake appropriate measures to engage citizens by using appropriate economic, fiscal and legal instruments, creating a positive environment that not only better informs about the various options and benefits, but also encourages purchasing decisions towards lower carbon content products. This needs to be complemented by designing standards and norms that will benefit the society as a whole, reflecting the expectations of EU consumers.

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## ANNEX 1 – LIST OF LEGAL ACTS

### Regulations

- Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89
- Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents
- Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor
- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001
- Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004
- Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004
- Regulation (EU) No 954/2011 of the European Parliament and of the Council of 14 September 2011 amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
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- Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009
- Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union
- Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
- Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds
- Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds
- Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)
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- Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
- Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
- Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC
- Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
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- Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014
- Regulation (EU) 2017/826 of the European Parliament and of the Council of 17 May 2017 on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy-making in the area of financial services for the period of 2017-2020
- Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008
- Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards to rules for wholesale roaming markets
- Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market
- Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
- Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds
- Commission Delegated Regulation (EU) 2017/1542 of 8 June 2017 amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates)
- Regulation (EU) 2017/1953 of the European Parliament and of the Council of 25 October 2017 amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities.

- Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004
- Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms
- Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012
- Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC
- Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services
- Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU

## Directives

- Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC
- Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles
- Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships
- Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters
- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
- Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability
- Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

- Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
- Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings
- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
- Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment
- 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
- Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)
- Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (recast)
- Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC
- Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010
- Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast)
- Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments
- Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast)
- Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits

- Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC
- Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes
- Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
- Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC
- Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
- Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment
- Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features
- Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union
- Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources
- Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC 2302
- Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC
- Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)
- Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal

offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

- Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)
- Directive (EU) 2017/2102 of the European Parliament and of the Council of 15 November 2017 amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment
- Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency
- Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency

## Product Standards

### Regulations

- Commission Regulation (EC) No 450/2009 of 29 May 2009 on active and intelligent materials and articles intended to come into contact with food
- Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products
- Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)
- Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products
- Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC
- Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel
- Commission Regulation (EU) No 257/2010 of 25 March 2010 setting up a programme for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives
- Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food
- Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council



- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004
- Commission Regulation (EU) No 207/2012 of 9 March 2012 on electronic instructions for use of medical devices Text with EEA relevance
- Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council
- Regulation (EU) No 259/2012 of the European Parliament and of the Council of 14 March 2012 amending Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents
- Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health
- Commission Regulation (EU) No 722/2012 of 8 August 2012 concerning particular requirements as regards the requirements laid down in Council Directives 90/385/EEC and 93/42/EEC with respect to active implantable medical devices and medical devices manufactured utilising tissues of animal
- Commission Implementing Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council, introducing it in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 1565/2000 and Commission Decision 1999/217/EC
- Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
- Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles Text with EEA relevance
- Regulation (EU) No 174/2013 of the European Parliament and of the Council of 5 February 2013 amending Regulation (EC) No 106/2008 on a Community energy-efficiency labelling programme for office equipment
- Commission Implementing Regulation (EU) No 503/2013 of 3 April 2013 on applications for authorisation of genetically modified food and feed in accordance with Regulation (EC) No 1829/2003 of the European Parliament and of the Council and amending Commission Regulations (EC) No 641/2004 and (EC) No 1981/2006
- Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009



- Commission Regulation (EU) No 681/2013 of 17 July 2013 amending part III of Annex II to Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys Text with EEA relevance
- Commission Implementing Regulation (EU) No 1321/2013 of 10 December 2013 establishing the Union list of authorised smoke flavouring primary products for use as such in or on foods and/or for the production of derived smoke flavourings
- Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91
- Regulation (EU) No 653/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and labelling of beef
- Commission Implementing Regulation (EU) No 828/2014 of 30 July 2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food
- Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
- Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC
- Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001
- Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)
- Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC
- Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU
- Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU

- Regulation (EU) 2017/2185 of 23 November 2017 on the codes for the designation of notified bodies in medical devices under Regulation (EU) 2017/745 and in vitro diagnostic medical devices under Regulation (EU) 2017/746.
- Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material
- Commission Implementing Regulation (EU) 2017/2468 of 20 December 2017 laying down administrative and scientific requirements concerning traditional foods from third countries in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods
- Commission Implementing Regulation (EU) 2017/2469 of 20 December 2017 laying down administrative and scientific requirements for applications referred to in Article 10 of Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods
- Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods
- Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007
- Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC

## Directives

- Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients
- Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms (Recast)
- Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys
- Commission Directive 2009/106/EC of 14 August 2009 amending Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption
- Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products
- Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application

- Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products
- Directive 2011/91/EU of the European Parliament and of the Council of 13 December 2011 on indications or marks identifying the lot to which a foodstuff belongs
- Commission Directive 2012/7/EU of 2 March 2012 amending, for the purpose of adaptation to technical progress, part III of Annex II to Directive 2009/48/EC of the European Parliament and of the Council relating to toy safety
- Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC
- Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC
- Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures
- Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) Text with EEA relevance
- Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels
- Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts
- Directive 2014/63/EU of the European Parliament and of the Council of 15 May 2014 amending Council Directive 2001/110/EC relating to honey
- Commission Directive 2014/79/EU of 20 June 2014 amending Appendix C of Annex II to Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, as regards TCEP, TCPP and TDCP
- Commission Directive 2014/81/EU of 23 June 2014 amending Appendix C of Annex II to Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, as regards bisphenol
- Commission Directive 2014/84/EU of 30 June 2014 amending Appendix A of Annex II to Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, as regards nickel
- Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory Text with EEA relevance
- Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC

## Proposals:

- Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property – COM(2011) 142 final
- Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council – COM(2013) 75 final
- Proposal for a Regulation of the European Parliament and of the Council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC – COM(2013) 78 final
- Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC – COM(2013) 512 final
- Proposal for a Regulation of the European Parliament and of the Council on personal protective equipment – COM(2014) 439 final
- Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content – COM(2015) 634 final
- Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods – COM(2015) 635 final
- Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market – COM(2016) 593 final
- Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes – COM(2016) 594 final
- Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (recast) – COM(2016) 590 final/2
- Proposal for a Regulation of the European Parliament and the Council establishing the Body of European Regulators for Electronic Communications – COM(2016) 591 final
- Proposal for a Regulation of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365 – COM(2016) 856 final
- Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC – COM(2017) 10 final
- Proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP) – COM(2017) 343 final
- Proposal for a Regulation of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union – COM(2017) 495 final

- Amended proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council – COM(2017) 637 final
- Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims – COM(2018) 96 final
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges – COM(2018) 163 final
- Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain – COM(2018) 173 final
- Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC – COM(2018) 184 final
- Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules – COM(2018) 185 final
- Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services – COM(2018) 238 final
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability – COM(2018) 336 final
- Proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product – COM(2017) 343 final
- Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)’ (COM(2017) 10 final — 2017/0003 (COD))
- Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast) (COM/2017/0676 final - 2017/0293 (COD))
- Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles (COM (2018) 284 final)
- Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment (COM (2018) 340 final)

## ANNEX 2 – LIST OF CJEU CASES

### Unfair Contract Terms Directive

Case	Year	Topics discussed regarding consumer protection
C-40/08 Asturcom Telecomunicaciones	2009	National courts are required to examine ex-officio the potential unfairness of contractual arbitration clauses in an action for an enforcement of an arbitration award which has become final.
C-234/08 Pannon GSM	2009	National courts are required to examine, of their own motion, whether a term contained in a contract may possibly be unfair.
C-84/08 Caja de Ahorros y Monte de Piedad de Madrid	2010	The Unfair Contract Terms Directive does not preclude more stringent national provisions designed to afford a higher level of consumer protection and empower the courts to assess unfairness of the terms defining the subject-matter of the contract.
C-137/08 VB Pénzügyi Lízing	2010	National courts must investigate their own motion to determine whether a term conferring exclusive territorial jurisdiction in a contract concluded between a seller or supplier and a consumer falls within the scope of the Unfair Contract Terms Directive and, if it does, assess ex-officio whether such a term is unfair.
C-76/10 Photovost	2010	Ex-officio control by a national court of penalties contained in a credit agreement being the basis for an application for enforcement of a final arbitral award. If a consumer credit contract does not mention the annual percentage rate, it might be a potential decisive factor when assessing the unfairness of a term.
C-472/10 Invitel	2012	Interpretation of Article 3 of the Directive in light of a term conferring a seller the right to unilaterally amend fees; possibility of declaring a term void in an action for an injunction; concretization of the role of the national court in assessing the unfair nature of those contractual terms: the national court must in particular determine, inter alia, whether, in light of all the terms appearing in the general business conditions of consumer contracts which include the contested term, and in light of the national legislation setting out rights and obligations which could supplement those provided by the general business conditions at issue, the reasons for, or the method of, the amendment of the fees connected with the service to be provided are set out in plain, intelligible language and, as the case may be, whether consumers have a right to terminate the contract.
C-453/10 Pereničová and Perenič	2012	National court when deciding whether a contract containing unfair terms can continue to exist without these terms cannot base its decision only on a possible advantage of the annulment for one of the parties; the role of existing misleading commercial practices in the evaluation of the unfairness of related contractual terms.
C-618/10 Banco Español de Crédito	2012	National courts are required to examine their own motion in order to determine whether a term contained in a contract may possibly be unfair. Article 6(1) of the Directive precludes national legislation allowing the national court, in these cases where it finds that an unfair term in a contract is void, to modify that contract by revising the content of that term.
C-92/11 RWE Vertrieb	2013	Applicability of the Unfair Contract Terms Directive to terms that reproduce national law applicable to another category of contracts and are not subject to the national legislation concerned; concretization of the requirements laid down in Articles 3 and 5 of the Unfair Contract Terms Directive regarding a term allowing an unilateral alteration by the supplier of the price of the service: whether the contract sets out in transparent fashion the reason for and method of the variation of those charges, so that the consumer can foresee, on the basis of clear, intelligible criteria, the alterations that may be made to those charges. The lack of information on the point before the contract is concluded cannot, in principle, be compensated for by the mere fact that consumers will, during the performance of the contract, be informed in good time of a variation of the charges and of their right to terminate the contract if they do not wish to accept the variation; and



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		whether the right of termination conferred on the consumer can actually be exercised in the specific circumstances.
C-397/11 Jörös	2013	Necessary ex-officio control of potentially unfair terms by national courts; clarification of the consequences that can be drawn by national court from a finding that the term is unfair (Art. 6 of the Unfair Contract Terms Directive)
C-415/11 Mohamed Aziz	2013	<p>Article 3(1) of the Unfair Contract Terms Directive must be interpreted as meaning that:</p> <ul style="list-style-type: none"> <li>– the concept of ‘significant imbalance’ to the detriment of the consumer must be assessed in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether and to what extent the contract places the consumer in a less favourable legal situation than that provided for by the national law in force. An assessment of the legal situation of that consumer having regard to the means at his disposal, under national law, to prevent continued use of unfair terms, should also be carried out;</li> <li>– in order to assess whether the imbalance arises ‘contrary to the requirement of good faith’, it must be determined whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to the term concerned in individual contract negotiations.</li> </ul> <p>Article 3(3) of the Unfair Contract Terms Directive must be interpreted as meaning that the annex to which that provision refers contains only an indicative and non-exhaustive list of terms which may be regarded as unfair.</p>
C-472/11 Banif Plus Bank Zrt	2013	<p>1. Articles 6(1) and 7(1) of the Unfair Contract Terms Directive contracts must be interpreted as meaning that the national court which has found from its own motion that a contractual term that is unfair is not obliged, in order to be able to draw the consequences arising from that finding, to wait for the consumer, who has been informed of his rights, to submit a statement requesting that that term be declared invalid. However, the principle of <i>audi alteram partem</i>, as a general rule, requires the national court which has found from its own motion that a contractual term is unfair to inform the parties to the dispute of that fact and to invite each of them to set out its views on that matter, with the opportunity to challenge the views of the other party, in accordance with the formal requirements laid down in that regard by the national rules of procedure.</p> <p>2. The national court must, in order to determine whether the contractual term on which the claim brought before it is based may be unfair, take account of all of the other terms of the contract.</p>
C-488/11 Jahani BV	2013	Applicability of the Unfair Contract Terms Directive on a residential tenancy agreement concluded between a landlord acting for purposes relating to his trade, business or profession and a tenant acting for purposes which do not relate to his trade, business or profession.
C-413/12 Anuntis Segundamano España SL	2013	The Unfair Contract Terms Directive and the principles of equivalence and effectiveness must be interpreted as not precluding national procedural rules under which actions for an injunction brought by consumer protection associations must be brought before the courts where the defendant is established or has its address and whereby no appeal lies against a decision declining territorial jurisdiction handed down by a court of first instance.
C-226/12 Constructora Principado SA	2014	<p>Article 3(1) of the Unfair Contract Terms Directive must be interpreted as meaning that:</p> <ul style="list-style-type: none"> <li>– the existence of a ‘significant imbalance’ does not necessarily require that the costs charged to the consumer by a contractual term have, as regards that consumer, a significant economic impact having regard to the value of the transaction in question,</li> </ul>



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		<p>but can result solely from a sufficiently serious impairment of the legal situation in which that consumer, as a party to the contract, is placed by reason of the relevant national provisions, whether this be in the form of a restriction of the rights which, in accordance with those provisions, he enjoys under that contract, or a constraint on the exercise of those rights, or the imposition on him of an additional obligation not envisaged by the national rules;</p> <p>– in assessing whether there is a significant imbalance, it is for the national court to take into account the nature of the goods or services for which the contract was concluded by referring to all the circumstances attending the conclusion of that contract, as well as all the other terms of contract.</p>
C-470/12 Pohotovost' s. r. o.	2014	<p>The Unfair Contract Terms Directive, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.</p>
C-26/13 Jelzálogbank Zrt	2014	<p>1. Article 4(2) the Directive must be interpreted as meaning that:</p> <ul style="list-style-type: none"> <li>- the expression the 'main subject-matter of a contract' covers a term, incorporated in a loan agreement denominated in foreign currency concluded between a seller or supplier and a consumer and not individually negotiated, pursuant to which the selling rate of exchange of that currency is applied for the purpose of calculating the repayment instalments for the loan, only in so far as it is found, which it is for the national court to ascertain having regard to the nature, general scheme and stipulations of the contract and its legal and factual context, that that term lays down an essential obligation of that agreement which, as such characterises it;</li> <li>- such a term, in so far as it contains a pecuniary obligation for the consumer to pay, in repayment of instalments of the loan, the difference between the selling rate of exchange and the buying rate of exchange of the foreign currency, cannot be considered as 'remuneration' the adequacy of which as consideration for a service supplied by the lender cannot be the subject of an examination as regards unfairness under Article 4(2) of Directive 93/13.</li> </ul> <p>2. Article 4(2) of Directive 93/13 must be interpreted as meaning that, as regards to a contractual term such as that at issue in the main proceedings, the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it.</p> <p>3. Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law.</p>
C-34/13 Capital a.s.	2014	<p>1. The Unfair Contract Terms Directive does not preclude national legislation, which allows the recovery of a debt that is based on potentially unfair contractual terms by the</p>

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		<p>extrajudicial enforcement of a charge on immovable property provided as security by the consumer, in so far as that legislation does not make it excessively difficult or impossible in practice to protect the rights conferred on consumers by that directive, which is a matter for the national court to determine.</p> <p>2. Article 1(2) of the Unfair Contract Terms Directive must be interpreted as meaning that a contractual term included in a contract concluded by a seller or supplier with a consumer falls outside the scope of that directive only if that contractual term reflects the content of a mandatory statutory or regulatory provision, which is a matter for the national court to determine.</p>
C-280/13 Barclays Bank SA	2014	The Unfair Contract Terms Directive and the principles of EU law relating to consumer protection and a balance in the parties' rights and obligations must be interpreted as meaning that statutory and regulatory provisions of a Member State, such as those at issue in the main proceedings, are excluded from their scope, when there is no contractual term altering the effect or ambit of those provisions.
C-169/14 Banco Bilbao Vizcaya Argentaria, SA	2014	Article 7(1) of the Unfair Contract Terms Directive, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a system of enforcement, which provides that mortgage enforcement proceedings may not be stayed by the court of first instance, which, in its final decision, may at most award compensation in respect of the damage suffered by the consumer, inasmuch as the latter, the debtor against whom mortgage enforcement proceedings are brought, may not appeal against a decision dismissing his objection to that enforcement, whereas the seller or supplier, the creditor seeking enforcement, may bring an appeal against a decision terminating the proceedings or ordering an unfair term to be disapplied.
C-143/13 SC Volksbank România SA	2015	Article 4(2) of the Unfair Contract Terms Directive must be interpreted as meaning that 'main subject-matter of the contract' and 'adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other' do not, in principle, cover the types of terms in the credit agreements concluded between a professional and consumers such as those at issue in the main proceedings, which, on one hand, allow, under certain conditions, the lender unilaterally to alter the interest rate and, on the other hand, provide for a 'risk charge' applied by the lender. However, it is for the national court to verify that classification of those contractual terms having regard to the nature, general scheme and stipulations of the agreements concerned and the legal and factual context of which they form part.
C-482/13, C-484/13, C-485/13 and C-487/13 Unicaja Banco, Sa	2015	<p>Article 6 of the Unfair Contract Terms Directive must be interpreted as not precluding a national provision under which the national court hearing mortgage enforcement proceedings is required to adjust the amounts due under a term in a mortgage-loan contract providing for default interest at a rate more than three times greater than the statutory rate in order that the amount of that interest may not exceed that threshold, provided that the application of that national provision:</p> <ul style="list-style-type: none"> <li>– is without prejudice to the assessment by that national court of the unfairness of such a term and</li> <li>– does not prevent that court from removing that term if it were to find the latter to be 'unfair', within the meaning of Article 3(1) of the directive.</li> </ul>
C-537/13 Birutė Šiba	2015	The Unfair Contract Terms Directive applies to standard form contracts for legal services, concluded by a lawyer with a natural person acting for purposes which are outside his trade, business or profession.
C-567/13 Raiffeisen Bank Zrt.	2015	Article 7(1) of the Unfair Contract Terms Directive does not preclude a national procedural rule pursuant to which a local court which has jurisdiction to rule on an action brought by a consumer seeking a declaration of invalidity of a standard contract does not

Case	Year	Topics discussed regarding consumer protection
		have jurisdiction to hear an application by the consumer for a declaration of unfairness of contract terms in the same contract, unless declining jurisdiction by the local court gives rise to procedural difficulties that would make the exercise of the rights conferred on consumers by the European Union legal order excessively difficult. It is for the national court to carry out the necessary verifications in that respect.
C-8/14 BBVA SA	2015	Articles 6 and 7 of the Unfair Contract Terms Directive preclude a national transitional provision/ which, as regards mortgage enforcement proceedings which were instituted before the date of entry into force of the law of which that provision forms part and which were not concluded at that date, imposes a time-limit on consumers calculated from the day following the publication of that law, to object to enforcement on the basis of the alleged unfairness of contractual terms
C-32/14 ERSTE Bank Hungary Zrt.	2015	Articles 6(1) and 7(1) of the Unfair Contract Terms Directive do not preclude national legislation, which allows a notary who drew up, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it when no review of the unfairness of the contractual terms has been performed at any stage.
C-96/14 Van Hove	2015	An insurance contract must set out transparently, in plain, intelligible language the functioning of the insurance arrangements, so that the concerned consumer can evaluate the economic consequences which derive from it.
C-110/14 SC Volksbank România SA	2015	Article 2(b) of the Unfair Contract Terms Directive must be interpreted as meaning that a natural person who practices as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a 'consumer' within the meaning of that provision, where that agreement is not linked to that lawyer's profession. The fact that the debt arising out of the same contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person's profession, such as a building belonging to that firm, is not relevant in that regard.
C-75/15 Tarcău	2015	Article 1(1) and Article 2(b) of the Unfair Contract Terms Directive must be interpreted as meaning that that directive may apply to a contract providing immovable property as security or to a guarantee contract concluded between a natural person and a credit institution in order to guarantee the obligations which a commercial company has entered into with that institution in the context of a credit agreement, where that natural person has acted for purposes outside their trade, business or profession and has no connection in terms of function with that company.
C-49/14 Finanmadrid EFC SA	2016	The Unfair Contract Terms Directive precludes national legislation, which does not permit the court ruling on the enforcement of an order for payment to assess of its own motion whether a term in a contract concluded between a seller or supplier and a consumer is unfair, when the authority hearing the application for an order for payment does not have the power to make such an assessment.
C-377/14 Radlinger and Radlingerová	2016	National courts are required to examine, of their own motion, whether a term contained in a contract may possibly be unfair.
C-119/15 Biuro podróży Partner	2016	Article 6(1) and 7 the Unfair Contract Terms Directive must be interpreted as not precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful standard contract terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided, that that seller or supplier has an effective judicial remedy against the decision declaring the terms compared to be equivalent in terms of the question whether, in the light of all relevant circumstances particular to each case, those terms are materially identical, having regard in particular to their harmful effects for consumers, and against the decision fixing the amount of the fine imposed, where applicable.

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C-154/15, C-307/15 and C-308/15 Gutiérrez Naranjo	2016	It is not possible to impose a temporal limitation on the effects of the invalidity of 'floor clauses' (clauses requiring the consumer to pay a minimum amount of interest) included in mortgage loan contracts concluded with consumers.
C-191/15 Amazon EU Sàrl	2016	According to Article 3(1) of the Unfair Contract Terms Directive a term in the general terms and conditions of a seller or supplier which has not been individually negotiated, under which the contract concluded with a consumer in the course of electronic commerce is to be governed by the law of the Member State in which the seller or supplier is established, is unfair in so far as it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 6(2) of Regulation No 593/2008 he also enjoys the protection of the mandatory provisions of the law that would be applicable in the absence of that term, this being for the national court to ascertain in the light of all the relevant circumstances.
C-381/14 and C-385/14	2016	Article 7 of the Unfair Contract Terms Directive must be interpreted as precluding a provision of national law, which requires a court, before which an individual action has been brought by a consumer seeking a declaration that a contractual term binding him to a seller or supplier is unfair, automatically to suspend such an action pending a final judgment concerning an ongoing collective action brought by a consumer association on the basis of Article 7(2) of the directive, seeking to prevent the continued use, in contracts of the same type, of terms similar to those at issue in that individual action, without the relevance of such a suspension from the point of view of the protection of the consumer who brought the individual action before the court being able to be taken into consideration and without that consumer being able to decide to dissociate himself from the collective action.
C-613/15 Ibercaja Banco	2016	The Unfair Contract Terms Directive does not permit the law of a Member State to restrict the discretion of a national court in respect of a finding of unfair terms in a mortgage contract concluded between a consumer and a professional; national law may not prevent the national court from setting aside terms if found 'unfair'.
C-7/16 Banco Poupular Español and PL Salvador	2016	Inapplicability of the Unfair Contract Terms Directive to national legislation, relating to the right of the person owing a debt that has been assigned by the creditor to a third party to extinguish his debt by reimbursing to that third party the price paid by the latter in respect of that assignment.
C-421/14 Banco Primus SA	2017	<p>1. Incompatibility of a Spanish transitional regulation imposing a time limit calculated from the day following publication of the regulation within which to object to enforcement with Articles 6 and 7 of the Unfair Contract Terms Directive.</p> <p>2. The Unfair Contract Terms Directive does not preclude a rule of national law which prohibits national courts from examining ex-officio the unfairness of terms where a ruling has already been given on the lawfulness of the term in a decision which has become res judicata.</p> <p>3. Interpretation of Articles 3 (1) and 4 in terms of the examination of the potential unfairness of a contractual term, meaning that:</p> <ul style="list-style-type: none"> <li>- the examination of the potential unfairness of a term of a contract concluded between a seller or supplier and a consumer requires it to be determined whether that term causes a significant imbalance in the parties' rights and obligations under a contract to the detriment of the consumer. That examination must be carried out in light of national rules which, in the absence of an agreement between the parties, are applicable, the means which the consumer has at his disposal under national law to bring an end to the use of that type of term, the nature of the goods or services covered by the contract at issue and all the circumstances surrounding the conclusion of the contract;</li> <li>- where the national court considers that a contractual term relating to the calculation of ordinary interest, such as that at issue in the main proceedings, is not in plain intelligible</li> </ul>

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		<p>language, within the meaning of Article 4(2) of that directive, it is required to examine whether that term is unfair within the meaning of Article 3(1) of the directive. In the context of that examination, it is the duty of the referring court, inter alia, to compare the method of calculation of the rate of ordinary interest laid down in that term and the actual sum resulting from that rate with the methods of calculation generally used, the statutory interest rate and the interest rates applied on the market at the date of conclusion of the agreement at issue in the main proceedings for a loan of a comparable sum and term to those of the loan agreement under consideration; and</p> <p>- as regards the assessment by a national court of the potential unfairness of the term relating to accelerated repayment resulting from a failure on the part of the debtor to comply with his obligations during a limited specific period, it is for the referring court to examine whether the right of the seller or supplier to call in the totality of the loan is conditional upon the non-compliance by the consumer with an obligation which is of essential importance in the context of the contractual relationship in question, whether that right is provided for in cases in which such non-compliance is sufficiently serious in the light of the term and amount of the loan, whether that right derogates from the applicable common law rules, where specific contractual provisions are lacking, and whether national law provides for adequate and effective means enabling the consumer subject to such a term to remedy the effects of the loan being called in.</p>
C-598/15 Banco Santander SA	2017	Inapplicability of the Unfair Contract Terms Directive to proceedings subsequent to an enforcement procedure, in which the successful bidder asserts his real rights over the immovable property.
C-186/16 Andriuc and Others	2017	When a financial institution grants a loan denominated in a foreign currency, it must provide the borrower with sufficient information to enable the latter to make a prudent and well-informed decision.
C-535/16 Bachmann	2017	Concretisation of the notion 'consumer' in the context of concluding an agreement for novation by a natural person with a credit institution in order to meet repayment obligations to that institution in respect of a credit obtained by a commercial company.
C-94/17 Escobedo Cortés (pending)	2017	<p>Interpretation of the Unfair Contract Terms Directive in consideration of terms setting certain default interest rates and the consequences in case of unfairness.</p> <p>Questions:</p> <p>Do Articles 3, in conjunction with [point 1(e) of the annex], and 4(1) of the Unfair Contract Terms Directive preclude a judicial interpretation that declares that a term in a loan agreement setting a rate of default interest that exceeds by more than 2% the annual ordinary interest rate fixed in the agreement constitutes disproportionately high compensation imposed on the consumer who is late performing his obligation to pay and is, therefore, unfair?</p> <p>Do Articles 3, in conjunction with [point 1(e) of the annex], 4(1), 6(1) and 7(1) of the Unfair Contract Terms Directive preclude a judicial interpretation that, when a term in a loan agreement that sets the rate of default interest is declared unfair, identifies, as the object of the review of unfairness, the fact that that rate exceeds the ordinary interest rate, on the grounds that it constitutes 'disproportionately high compensation imposed on the consumer who has not performed his obligations', and establishes as the consequence of the declaration of unfairness that that additional charge must cease to apply, so that only ordinary interest continues to accrue until the loan has been repaid?</p> <p>If the second question were to be answered in the negative: must a declaration that a term setting a rate of default interest is void, because unfair, have other effects in order to be compatible with the Unfair Contract Terms Directive, such as, for example, the total elimination of both ordinary and default interest, when the borrower fails to perform his</p>

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		obligation to make the loan repayments within the time-limits stipulated in the agreement, or the charging of statutory interest?
C-344/17 IJDF Italy	2017	The Unfair Contract Terms Directive is inapplicable in the context of a dispute concerning the determination of the court with jurisdiction to hear related cases, where that dispute does not fall within the scope of Directive 93/13.
C-446/17 Woonhaven Antwerpen	2017	Art. 1 (2) of the Unfair Contract Terms Directive does not apply on contract terms in rental contracts concluded between a recognised social housing association and a tenant.
C-96/16 and C-94/17 Banco Santander SA	2018	<p>1. Inapplicability of the Unfair Contract Terms Directive on business practices consisting in assigning or purchasing a consumer's debt without his participation.</p> <p>2. Directive 93/13 must be interpreted as not precluding national case-law, such as that of the Tribunal Supremo (Supreme Court, Spain) at issue in the main proceedings, whereby, in a loan agreement concluded with a consumer, a non-negotiated term fixing the default interest rate applicable is unfair, on the ground that the consumer who is late performing his payment obligation is required to pay a disproportionately high sum in compensation, where that rate exceeds by more than two percentage points the ordinary interest rate provided for in that agreement.</p> <p>3. Directive 93/13 must be interpreted as not precluding national case-law, such as that of the Tribunal Supremo (Supreme Court) at issue in the main proceedings, whereby the consequence of the unfairness of a non-negotiated term fixing the default interest rate in a loan agreement concluded with a consumer consists in the complete elimination of that interest, while the ordinary interest provided for in that agreement continues to run.</p>
C-147/16 Karel de Grote – Hogeschool Katholieke	2018	Obligation to examine by the national court on its own motion whether a contract is within the scope of the Unfair Contract Terms Directive; concretion of the notion of 'seller or supplier' insofar, as a free educational establishment which provides subsidised tuition may be considered as a 'seller or supplier' within the meaning of Directive 93/13 when it enters into a contract covered by that directive for purposes related to its activities.
C-483/16 Sziper	2018	Compatibility of national legislation providing for specific procedural requirements when the fairness of terms is challenged with Art. 7 of the Directive by obliging the consumer to declare a certain legal consequence of the voidness and to quantify the entitlements resulting from this voidness.
C-51/17 OTP Bank and OTP Factoring	2018	<p>1. The concept of 'term which has not been individually negotiated' in Article 3(1) of the Unfair Contract Terms Directive contracts must be interpreted as meaning that it covers inter alia a contractual term amended by a mandatory national statutory provision adopted after the conclusion of a contract with a consumer, for the purpose of removing a term which is null and void from that contract.</p> <p>2. Article 1(2) of the Unfair Contract Terms Directive must be interpreted as meaning that the scope of that directive does not cover terms which reflect mandatory provisions of national law, inserted after the conclusion of a loan contract concluded with a consumer and intended to remove a term which is null and void from that contract, by imposing an exchange rate set by the National Bank. However, a term relating to the foreign exchange risk, such as that at issue in the main proceedings, is not excluded from that scope under that provision.</p> <p>3. Article 4(2) of the Unfair Contract Terms Directive must be interpreted as meaning that the requirement for a contractual term to be drafted in plain intelligible language requires financial institutions to provide borrowers with adequate information to enable them to take well-informed and prudent decisions. In that regard, that requirement means that a term relating to the foreign exchange risk must be understood by the</p>



Case	Year	Topics discussed regarding consumer protection
		<p>consumer both at the formal and grammatical level and also in terms of its actual effects, so that the average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the possibility of a depreciation of the national currency in relation to the foreign currency in which the loan was denominated, but would also be able to assess the potentially significant economic consequences of such a term with regard to his financial obligations.</p> <p>4. Article 4 of the Unfair Contract Terms Directive must be interpreted as requiring that the plainness and intelligibility of the contractual terms be assessed by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract, notwithstanding that some of those terms have been declared or presumed to be unfair and, accordingly, annulled at a later time by the national legislature.</p> <p>5. Article 6(1) and Article 7(1) of the Unfair Contract Terms Directive must be interpreted as meaning that it is for the national court to identify of its own motion, in the place of the consumer in his capacity as an applicant, any unfairness of a contractual term, provided that it has access to the legal and factual elements necessary for that task.</p>
C-119/17 Lupean	2018	<p>Term determining that the loan of a credit must be repaid in the same currency falls within the scope of 'main subject matter of the contract'; A contract term transferring the entire exchange risk to the borrower may be considered as unfair by the national court, if it causes a significant imbalance between the rights of the consumer and the seller to the detriment of the consumer, taking into consideration all the circumstances of the case.</p>
C-126/17 ERSTE Bank Hungary	2018	<p>1. Article 4(2) and Article 5 of the Unfair Contract Terms Directive must be interpreted as meaning that the terms of a loan agreement concluded between a consumer and a bank in a Member State, in which the amount of money that will be made available to that consumer denominated in a foreign currency as an accounting currency, defined in relation to the payment currency, is clearly indicated, satisfy the requirement of those provisions that contractual terms must be drafted in plain, intelligible language. In so far as the determination of that amount depends on the exchange rate applicable at the time of the release of the funds, that requirement means that the methods of calculation of the amount actually loaned and the rate of exchange applicable should be transparent, so that an average consumer who is reasonably well informed and reasonably observant and circumspect may assess, on the basis of clear, intelligible criteria, the economic consequences for him which derive from that contract, including, inter alia, the total cost of the sum borrowed.</p> <p>2. Article 6(1) of the Unfair Contract Terms Directive must be interpreted as meaning that in a situation in which a national court finds that the terms of a loan contract concluded between a consumer and a bank are unfair, that provision does not preclude that court from declaring that that contract is invalid in its entirety if it cannot continue in existence after the deletion of those terms.</p>
C-176/17 Profi Credit Polska	2018	<p>Infringement of Article 7(1) of the Unfair Contract Terms Directive by issuing an order for payment on a valid promissory note that secures a claim arising from a consumer credit agreement, where the court does not have the power to examine whether the terms of the agreement are unfair, if the detailed rules for exercising the right to lodge an objection against such an order do not enable observance of the rights which the consumer derives from that directive to be ensured.</p>
C-448/17 EOS KSI Slovensko	2018	<p>Obligation to indicate the annual percentage rate in the written agreement the Unfair Contract Terms Directive precludes national legislation which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer and to lodge an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations in disputes falling</p>



Case	Year	Topics discussed regarding consumer protection
		within the scope of Union law to less favourable conditions than those applicable to disputes exclusively within the scope of national law.

### Consumer Sales Directive

Case	Year	Topics discussed regarding consumer protection
C-87 and 65/09 Gebr. Weber and Putz	2011	<p>1. Article 3(2) and (3) of the Consumer Sales Directive must be interpreted as meaning that, where consumer goods not in conformity with the contract which were installed in good faith by the consumer in a manner consistent with their nature and purpose, before the defect became apparent, are restored to conformity by way of replacement, the seller is obliged either to remove the goods from where they were installed and to install the replacement goods there or else to bear the cost of that removal and installation of the replacement goods. That obligation on the seller exists regardless of whether he was obliged under the contract of sale to install the consumer goods originally purchased.</p> <p>2. Article 3(3) of the Consumer Sales Directive must be interpreted as precluding national legislation from granting the seller the right to refuse to replace goods not in conformity, as the only remedy possible, on the ground that, because of the obligation to remove the goods from where they were installed and to install the replacement goods there, replacement imposes costs on him which are disproportionate with regard to the value that the goods would have if there were no lack of conformity and the significance of the lack of conformity. That provision does not, however, preclude the consumer's right to reimbursement of the cost of removing the defective goods and of installing the replacement goods from being limited, in such a case, to the payment by the seller of a proportionate amount.</p>
C-32/12 Hueros Duarte	2013	The Consumer Sales Directive precludes national legislations, which does not allow the national court hearing the dispute to grant of its own motion an appropriate reduction in the price of goods which are the subject of a contract of sale in the case where a consumer who is entitled to such a reduction brings proceedings which are limited to seeking only rescission of that contract and such rescission cannot be granted because the lack of conformity in those goods is minor, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end.
C-497/13 Faber	2015	Any lack of conformity which becomes apparent within six months of the delivery of goods is to be presumed to have existed at the time of delivery. Thus, although the consumer must prove that a lack of conformity exists and that it became apparent within six months, he is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller.
C-149/15 Wathelet	2016	The concept of 'seller', for the purposes of Article 1(2)(c) of the Consumer Sales Directive covers also a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual, which it is for the national court to determine, taking into account all the circumstances of the case. This interpretation does not depend on whether the intermediary is remunerated for acting as intermediary.
C-133/16 Ferenschild	2017	Article 5(1) and the second subparagraph of Article 7(1) of the Consumer Sales Directive preclude national provision which allows the limitation period for action by the consumer to be shorter than two years from the time of delivery of the goods where the Member State has made use of the option given by the latter of those two provisions, and the seller and consumer have agreed on a period of liability of the seller of less than two years, namely a one-year period, for the second-hand goods concerned.

C-247/16 Schottelius	2017	Area of application of the Consumer Sales Directive; it is not applicable on a contract for work, since a contract for work does not constitute a 'contract of sale' by the meaning of the Directive.
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## Consumer Rights Directive

Case	Year	Topics discussed regarding consumer protection
C-568/15 comtech GmbH	2017	The concept of 'basic rate' referred to in Article 21 of the Consumer Rights Directive must be interpreted as meaning that call charges relating to a contract concluded with a trader to a telephone helpline operated by the trader may not exceed the cost of a call to a standard geographic landline or mobile telephone line. Provided that that limit is respected, the fact that the relevant trader makes or does not make a profit through that telephone helpline is irrelevant.
C-332/17 Starman AS	2018	The first subparagraph of Article 21 of the Consumer Rights Directive precludes a situation in which, if a trader has made available to all its customers one or more speed dial numbers at a rate higher than the basic rate, consumers who have concluded a contract with the trader in question pay more than the basic rate when contacting that trader by telephone in relation to that contract.
C-485/17 Unimatic	2018	Article 2(9) of the Consumer Rights Directive must be interpreted as meaning that a stand, run by a trader at a trade fair, at which he carries out his activity for a few days each year, constitutes 'business premises' within the meaning of that provision if, in the light of all the factual circumstances surrounding that activity, in particular the appearance of the stand and the information relayed on the premises of the fair itself, a reasonably well-informed and reasonably observant and circumspect consumer could reasonably assume that the trader is carrying out his activity there and will solicit him in order to conclude a contract, which is for the national court to ascertain.
C-649/17 Amazon (pending)	2018	<p>1. May Member States enact a provision that — like the provision in Article 246a(1)(1), first sentence, No 2, of the EGBGB (Introductory Law to the Civil Code) — obliges a trader to make his telephone number available to the consumer (not just where available but) always when entering into distance contracts prior to acceptance of the contract?</p> <p>2. Does the expression 'gegebenenfalls' ('where available') used in (the German language version of) Article 6(1)(c) the Consumer Rights Directive mean that a trader must provide information only about the communication methods already actually available in his undertaking, meaning that he is not required to set up a new telephone or fax connection or e-mail account when he decides also to enter into distance contracts in his undertaking?</p> <p>3. If the answer to Question 2 is yes:</p> <p>Does the expression 'gegebenenfalls' ('where available') used in (the German language version of) Article 6(1)(c) of the Consumer Rights Directive mean that only those communication methods are already available in an undertaking that are actually also used by the trader [Or. 3] to contact consumers when entering into distance contracts, or are those communication methods also available in the undertaking that are used by the trader up to that time exclusively for other purposes, such as communication with other traders or authorities?</p> <p>4. Is the list of communication methods specified in Article 6(1)(c) of the Consumer Rights Directive, namely, telephone, fax and e-mail, exhaustive, or may the trader also use other communication methods that are not mentioned there, such as internet chats or a telephone callback system, provided that this ensures quick contact and efficient communication?</p>

Case	Year	Topics discussed regarding consumer protection
		5. Does the application of the transparency requirement of Article 6(1) of the Consumer Rights Directive, according to which the trader must inform the consumer of the communication methods set out in Article 6(1)(c) of Directive 2011/83/EU in a clear and comprehensible manner, depend on the information being supplied quickly and efficiently?
C-681/17 (pending)	2018	<p>1. Should Article 16(e) of the Consumer Rights Directive be interpreted as meaning that the goods referred to there which are not suitable for return due to health protection or hygiene reasons include goods (such as, for example, mattresses) which, although when used as intended may come into direct contact with the human body, can nevertheless be made saleable again by means of suitable (cleaning) measures by the trader?</p> <p>2. If Question 1 is answered in the affirmative:</p> <p>a) What requirements must the packaging of goods satisfy for it to be considered that sealing within the meaning of Article 16(e) of the Consumer Rights Directive exists?</p> <p>b) Does the information that the trader has to give pursuant to Article 6(1)(k) of the Consumer Rights Directive before the contract becomes binding have to be provided in such a way that the consumer is informed, with specific reference to the article to be purchased (here a mattress) and the seal that is applied, that he will lose the right of withdrawal if he removes the seal?</p>

### Consumer Credit Directive

Case	Year	Topics discussed regarding consumer protection
C-602/10 SC Volksbank România	2012	Article 22(1) of the Consumer Credit Directive does not preclude national law transposing the directive, which includes in its scope credit agreements secured by immovable property, although these agreements are expressly excluded from the material scope of the Directive by virtue of Article 2(2)(a).
C-449/13 CA Consumer Finance	2014	<p>1. The burden of proving the non-performance of the obligations laid down in Articles 5 and 8 of the Consumer Credit Directive must not be conferred to the consumer.</p> <p>2. The burden of proof concerning the performance of the creditor's pre-contractual obligations cannot be conferred to the consumer.</p> <p>3. Article 8(1) of the Consumer Credit Directive must be interpreted to the effect that, first, it does not preclude the consumer's creditworthiness assessment from being carried out solely on the basis of information supplied by the consumer, provided that that information is sufficient and that mere declarations by the consumer are also accompanied by supporting evidence and, secondly, that it does not require the creditor to carry out systematic checks of the veracity of the information supplied by the consumer.</p> <p>4. Article 5(6) of the Consumer Credit Directive must be interpreted to the effect that, although it does not preclude a creditor from providing the consumer with adequate explanations before assessing the financial situation and the needs of that consumer, it may be that the assessment of the consumer's creditworthiness means that the adequate explanations provided need to be adapted, and that those explanations must be communicated to the consumer in good time before the credit agreement is signed, without this, however, requiring a specific document to be drawn up.</p>
C-565/12 LCL Crédit Lyonnais	2014	Article 23 of the Consumer Credit Directive precludes a national system of penalties under which, in the event of failure on the part of the creditor to comply with its obligation, prior to conclusion of an agreement, to assess the borrower's

Case	Year	Topics discussed regarding consumer protection
		creditworthiness by consulting the relevant database, that creditor forfeits its entitlement to contractual interest but is automatically entitled to interest at the statutory rate, payable from the date of delivery of a court decision ordering that borrower to pay the outstanding sums, which is further increased by five percentage points if, on expiry of a period of two months following that decision, the borrower has not repaid his debt in full, where the referring court finds that — in a case such as that in the main proceedings, in which the outstanding amount of the principal of the loan is immediately payable as a result of the borrower's default — the amounts which the creditor is in fact likely to receive following the application of the penalty of forfeiture of entitlement to contractual interest are not significantly lower than those which it could have received had it complied with its obligation to assess the borrower's creditworthiness.
C-377/14 Radlinger and Radlingerová	2016	By virtue of the Consumer Credit Directive, a national court hearing a dispute concerning claims arising from such a contract must also ascertain of its own motion whether the information relating to the credit (such as the APR, for example) which must be set out therein has been stated clearly and concisely.
C-42/15 Home Credit Slovakia	2016	<p>1. Article 10(1) and (2) of the Consumer Credit Directive, read in conjunction with Article 3(m), thereof, mean the following:</p> <ul style="list-style-type: none"> <li>- a credit agreement does not need necessarily to be drawn up in a single document, but all the information referred to in Article 10(2) of the directive must be set out on paper or on another durable medium;</li> <li>- it does not preclude Member States from providing in its national legislation, first, that a credit agreement falling within the scope of the Consumer Credit Directive which is drawn up on paper must be signed by the parties and, second, that the requirement that the agreement be signed applies to all the details of that agreement referred to in Article 10(2) of the directive.</li> </ul> <p>2. Article 10(2)(h) of the Consumer Credit Directive must be interpreted as meaning that a credit agreement need not indicate the specific date on which every payment to be made by the consumer falls due, provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty.</p> <p>3. Article 10(2)(h) and (i) of the Consumer Credit Directive must be interpreted as meaning that a fixed-term credit agreement, providing for amortisation of the capital in consecutive instalments, need not state, in the form of an amortisation table, the part of each instalment that will be allocated to repayment of capital. Those provisions, read in conjunction with Article 22(1) of the directive, preclude Member States from imposing such an obligation under national law.</p> <p>4. Article 23 of the Consumer Credit Directive must be interpreted as not precluding a Member State from providing, under national law, that, where a credit agreement does not include all the information required under Article 10(2) of the directive, the agreement is deemed to be interest-free and free of charges, provided that the information covers matters which, if not included, may compromise the ability of the consumer to assess the extent of his liability.</p>
C-127/15 Verein für Konsumenteninformation	2016	Article 2(2)(j) and 3(f) of the Consumer Credit Directive must be interpreted as meaning that a credit rescheduling agreement, which is concluded, following the consumer's default, between that consumer and the lender through a debt collection agency, is not agreed to 'free of charge', within the meaning of that article, where, by that agreement, the consumer undertakes to repay the total amount of that credit and to pay interest and costs that were not provided for by the initial contract under which that credit was granted; Article 3(f) and Article 7 of the Consumer Credit Directive must be interpreted as meaning that a debt collection agency which concludes, on behalf of a lender, a

Case	Year	Topics discussed regarding consumer protection
		rescheduling agreement for an unpaid credit, but which acts as a credit intermediary only in an ancillary capacity, which is for the referring court to determine, must be regarded as being a 'credit intermediary' within the meaning of Article 3(f) and is not subject to the obligation to provide the consumer with pre-contractual information under Articles 5 and 6 of that directive.
C-511/15 Horžić	2016	Articles 23 (1) and 30 of the Consumer Credit Directive must be interpreted as not precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning variable interest rates in respect of credit agreements existing at the date on which those provisions came into force, since those credit agreements fall outside the material scope of that directive and, furthermore, those obligations do not constitute an implementation of that directive.

## Mortgage Credit Directive

No results found.

## ADR

Case	Year	Topics discussed regarding consumer protection
C-75/16 Menini, Rampanelli	2017	<p>Not precluding national legislation, such as that at issue in the main proceedings, which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.</p> <p>Precluding national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.</p>

## Timeshare

No results found.

## Package Travel

No results found.

## Unfair Commercial Practices Directive

Case	Year	Topics discussed regarding consumer protection
C-261/07 and C-299/07 Total Belgium and Galatea	2009	Precluded national legislation, which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.
C-304/08 Plus Warenhandels-gesellschaft	2010	Precluded national legislation, which provides for a prohibition in principle, without taking account of the specific circumstances of individual cases, of commercial practices under which the participation of consumers in a prize competition or lottery is made conditional on the purchase of goods or the use of services.

Case	Year	Topics discussed regarding consumer protection
C-540/08 Mediaprint	2010	<p>1. Precluded national legislation, which lays down a general prohibition on sales with bonuses, is not only designed to protect consumers but also to pursue other objectives.</p> <p>2. The possibility of participating in a prize competition, linked to the purchase of a newspaper, does not constitute an unfair commercial practice within the meaning of Article 5(2) of the Unfair Commercial Practices Directive, simply on the ground that, for at least some of the consumers concerned, that possibility of participating in a competition represents the factor which determines them to buy that newspaper.</p>
C-522/08 Telekom. Polska	2010	Precluded national legislation which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.
C-122/10 Ving Sverige	2011	<p>1. The words 'thereby enables the consumer to make a purchase' in Article 2(i) of the Unfair Commercial Practices Directive means that an invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product or for it to appear in proximity to and at the same time as such an opportunity.</p> <p>2. Article 2(i) of the Unfair Commercial Practices Directive means that the requirement relating to the indication of the price of the product may be met if the commercial communication contains an entry-level price, that is to say the lowest price for which the advertised product or category of products can be bought, while the advertised product or category of products are available in other versions or with other content at prices which are not indicated.</p> <p>3. Article 2(i) of the Unfair Commercial Practices Directive means that a verbal or visual reference to the product makes it possible to meet the requirement relating to the indication of the product's characteristics, and that includes a situation where such a verbal or visual reference is used to designate a product which is offered in many versions.</p> <p>4. Article 7(4)(a) of the Unfair Commercial Practices Directive means that it may be sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on the condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7 of that directive.</p> <p>5. Article 7(4)(c) of the Unfair Commercial Practices Directive means that a reference only to an entry-level price in an invitation to purchase cannot be regarded, in itself, as constituting a misleading omission.</p>
C-288/10 Wamo	2011	The Unfair Commercial Practices Directive precludes a national provision, which provides for a general prohibition of announcements of price reductions or announcements suggesting such reductions during the period preceding sales, in so far as the provision pursues objectives relating to consumer protection. It is for the national court to determine whether that is the situation in the case in the main proceedings.
C-126/11 Inno	2011	The Unfair Commercial Practices Directive precludes a national provision providing for a general prohibition of price reduction announcements and of those suggesting such a reduction during the period preceding the sale of the balance, provided that this provision pursues purposes relating to the protection of consumers.
C-428/11 Purely Creative	2012	Paragraph 31, second indent, of Annex I to The Unfair Commercial Practices Directive must be interpreted as prohibiting aggressive practices by which traders, such as those at issue in the main proceedings, give the false impression that the consumer has already

Case	Year	Topics discussed regarding consumer protection
		<p>won a prize, while the taking of any action in relation to claiming that prize, be it requesting information concerning the nature of that prize or taking possession of it, is subject to an obligation on the consumer to pay money or to incur any cost whatsoever;</p> <p>It is irrelevant that the cost imposed on the consumer, such as the cost of a stamp, is de minimis compared with the value of the prize or that it does not procure the trader any benefit;</p> <p>It is also irrelevant that the trader offers the consumer a number of methods by which he may claim the prize, at least one of which is free of charge, if, according to one or more of the proposed methods, the consumer would incur a cost in order to obtain information on the prize or how to acquire it;</p> <p>It is for the national courts to assess the information provided to consumers in the light of recitals 18 and 19 in the preamble to the Unfair Commercial Practices Directive and Article 5(2)(b) thereof, that is to say, by taking into account whether that information is clear and can be understood by the public targeted by the practice.</p>
C-559/11 Pelckmans Turnhout	2012	The Unfair Commercial Practices Directive must be interpreted as meaning that it does not apply to national legislation which does not pursue purposes relating to the protection of consumers.
C-453/10 Pereničová and Perenič	2012	A commercial practice, which consists in indicating in a credit agreement an annual percentage rate of charge lower than the real rate must be regarded as 'misleading' within the meaning of Article 6(1) the Unfair Commercial Practices Directive in so far as it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.
C-206/11 Köck	2013	The Unfair Commercial Practices Directive precludes national courts from ordering the cessation of a commercial practice not covered by Annex I to that directive on the sole ground that the practice has not been the subject of prior authorisation by the competent administrative authority, without itself carrying out an assessment of the unfairness of the practice in question against the criteria set out in Articles 5 to 9 of that directive.
C-435/11 CHS Tour Services	2013	Under the Unfair Commercial Practices Directive, if a commercial practice satisfies all the criteria specified in Article 6(1) of that directive for being categorised as a misleading practice in relation to the consumer, it is not necessary to determine whether such a practice is also contrary to the requirements of professional diligence as referred to in Article 5(2)(a) of the directive in order for it legitimately to be regarded as unfair and, therefore, prohibited in accordance with Article 5(1) of the directive.
C-59/12 BKK Mobil Oil	2013	Statutory health insurance funds may also be held liable for unfair commercial practices. Thus, it is a misleading practice for a health insurance fund to indicate to its members that they risk incurring financial losses if they leave that fund for another.
C-265/12 Citroën Belux	2013	Article 3(9) of the Unfair Commercial Practices Directive must be interpreted, as must Article 56 TFEU, as not precluding a national provision, such as that at issue in the main proceedings, which lays down a general prohibition – save in the cases exhaustively listed by the national legislation – of combined offers made to consumers where at least one of the components of those offers is a financial service.
C-281/12 Trento Sviluppo	2013	A commercial practice must be classified as 'misleading' for the purposes of Article 6(1) of the Unfair Commercial Practices Directive where that practice contains false information, or is likely to deceive the average consumer, and is likely to cause the



Case	Year	Topics discussed regarding consumer protection
		consumer to take a transactional decision that he would not have taken otherwise. Article 2(k) of the directive must be interpreted as meaning that any decision directly related to the decision whether or not to purchase a product is covered by the concept of 'transactional decision'.
C-343/12 Euronics	2013	The Unfair Commercial Practices Directive precludes national provision, which provides for a general prohibition of offering for sale or selling at a loss in so far as that provision pursues objectives relating to consumer protection.
C-421/12 EC vs Kingdom of Belgium	2014	The Unfair Commercial Practices Directive precludes: <ol style="list-style-type: none"> <li>1. the exclusion of the professions, dentists and physiotherapists from the scope of the national legislation transposing that directive;</li> <li>2. provisions which prohibit a price reduction from lasting for more than a month and provide that announcements of price reductions may not last for less than a day;</li> <li>3. the prohibition, save for certain goods and services, of all door-to-door selling at the home of the consumer for products or services exceeding EUR 250 for each consumer and the prohibition of itinerant trading in certain products, including precious metals and stones and fine pearls</li> </ol>
C-515/12 '4finance' UAB vs Lithuanian Finance Ministry	2014	Annex I, point 14 of the Unfair Commercial Practices Directive, must be interpreted as meaning that a pyramid promotional scheme constitutes an unfair commercial practice only where such a scheme requires the consumer to give financial consideration, regardless of its amount, for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
C-388/13 UPC	2015	<ol style="list-style-type: none"> <li>1. The Unfair Commercial Practices Directive must be interpreted as meaning that the communication, by a professional to a consumer, of erroneous information, such as that at issue in the main proceedings, must be classified as a 'misleading commercial practice', within the meaning of that directive, even though that information concerned only one single consumer.</li> <li>2. The Unfair Commercial Practices Directive must be interpreted as meaning that, if a commercial practice meets all of the criteria specified in Article 6(1) of that directive for classification as a misleading practice in relation to the consumer, it is not necessary further to determine whether such a practice is also contrary to the requirements of professional diligence, as referred to in Article 5(2)(a) of that directive, in order for it legitimately to be regarded as unfair and, consequently, prohibited in accordance with Article 5(1) of that directive.</li> </ol>
C-13/15 Cdiscount	2015	The Unfair Commercial Practices Directive must be interpreted as precluding national rules, such as those at issue in the main proceedings, and in so far as these pursue objectives relating to consumer protection, which impose a general prohibition on announcements of price reductions which do not show the reference price when the price is marked or displayed, when no case-by-case assessment has been undertaken to determine whether the announcements are unfair. It is for the referring court to determine whether that is so in the case in the main proceedings.
C-544/13 and C-545/13 Abcur AB	2015	Even where medicinal products for human use, such as those at issue in the main proceedings, fall within the scope of Directive 2001/83, as amended by Directive 2004/27, advertising practices relating to those medicinal products, such as those alleged in the

Case	Year	Topics discussed regarding consumer protection
		main proceedings, can also fall within the scope of the Unfair Commercial Practices Directive, provided that the conditions for application of that directive are satisfied.
C-310/15 Deroo-Blanquart	2016	A combined offer consisting of the sale of a computer equipped with pre-installed software does not constitute, in itself, an unfair commercial practice. Moreover, failure to indicate the price of each pre-installed software program cannot be regarded as a misleading commercial practice, since the price of the various software programs does not constitute material information for the consumer
C-568/15 comtech GmbH	2017	Cost of a call to an after-sales telephone number must not exceed the cost of a standard call, otherwise it will constitute an unfair commercial practice
C-339/15 Vanderborght	2017	The Unfair Commercial Practices does not preclude a national provision, which protects public health and the dignity of the profession of dentist, first, by imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services and, secondly, by establishing certain requirements of discretion with regard to signs of dental practices.
C-295/16 Europamur	2017	The Unfair Commercial Practices Directive precludes a national provision, which contains a general prohibition on offering for sale or selling goods at a loss and which lays down grounds of derogation from that prohibition that are based on criteria not appearing in that directive.
C-357/16 'Gelvora' UAB	2017	The Unfair Commercial Practices Directive must be interpreted as meaning that the legal relationship between a debt collection agency and the debtor, who has defaulted under a consumer credit agreement and whose debt has been assigned to that agency, falls within the material scope of the directive. The practices in which that agency engages in order to recover that debt fall within the concept of 'product' within the meaning of Article 2(c) of that directive. In that regard, the fact that the existence of the debt was confirmed by a court decision, and that that decision was passed to a bailiff for enforcement, is without consequence.
C-632/16 Dyson	2018	Article 7 of the Unfair Commercial Practices Directive must be interpreted as meaning that the act of not providing consumers with information on the testing conditions that resulted in the energy classification indicated on the label relating to the energy class of vacuum cleaners, the model of which is shown in Annex II to Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners does not constitute a 'misleading omission' within the meaning of that provision.
C-54/17 and C-55/17 Autorità Garante	2018	<p>1. The concept of 'inertia selling' within the meaning of Annex I, point 29 must be interpreted as including, subject to verifications by the referring court, conduct, such as that at issue in the main proceedings, whereby a telecommunications operator sells SIM (Subscriber Identity Module) cards on which services such as internet browsing services and voicemail services are pre-loaded and pre-activated without first sufficiently informing the consumer of that pre-loading and pre-activation, nor the cost of those services.</p> <p>2. Article 3(4) must be interpreted as not precluding national rules under which conduct constituting inertia selling, within the meaning of Annex I, point 29 of the Unfair Commercial Practices Directive, must be assessed in the light of the provisions of that directive, with the result that, according to that legislation, the ARN, within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002</p>

Case	Year	Topics discussed regarding consumer protection
		on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, is not competent to penalise such conduct.
C-109/17 Banka SA	2018	<p>Article 11 of the Unfair Commercial Practices Directive must be interpreted as not precluding national legislation, which prohibits the court hearing mortgage enforcement proceedings from reviewing, of its own motion or at the request of the parties, the validity of the enforceable instrument in light of the existence of unfair commercial practices and, in any event, prohibits the court having jurisdiction to rule on the substance regarding the existence of those practices from adopting any interim measures, such as staying the mortgage enforcement proceedings.</p> <p>Article 11 of the Unfair Commercial Practices Directive must be interpreted as not precluding national legislation which does not confer a legally binding nature on a code of conduct such as those referred to in Article 10 of that directive.</p>
C-105/17 Kamenova	2018	Article 2(b) and (d) of Directive 2005/29/EC and Article 2(2) of Directive 2011/83/EU must be interpreted as meaning that a natural person who publishes simultaneously on a website a number of advertisements offering new and second-hand goods for sale can be classified as a 'trader', and such an activity can constitute a 'commercial practice', only if that person is acting for purposes relating to his trade, business, craft or profession, this being a matter for the national court to determine, in the light of all relevant circumstances of the individual case.

### Directive 85/577/EEC

Case	Year	Topics discussed regarding consumer protection
C-166/11 González Alonso	2012	A contract concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company offering the contract falls outside the scope of the Off-premises Contract Directive, in accordance with Article 3(2)(d) thereof.
C-215/08 E. Friz	2010	The Off-premises Contract Directive applies to a contract, concluded in circumstances such as those at issue in the main proceedings, concerning a consumer's entry to a closed-end real property fund established in the form of a partnership when the principal purpose of joining is not to become a member of that partnership, but is a means of capital investment; Article 5(2) of the directive does not preclude, a national law according to which, in the event of cancellation of membership of a closed-end real property fund established in the form of a partnership, entered into following a doorstep transaction, the consumer has a claim against that partnership, to his severance balance, calculated on the basis of the value of his interest at the date of his retirement from membership of that fund, and may therefore get back less than the value of his capital contribution or have to participate in the losses of that fund.
C-227/08 Martín Martín	2009	Article 4 of the Off-premises Contract Directive does not preclude a national court from declaring, of its own motion, that a contract falling within the scope of that directive is void on the ground that the consumer was not informed of his right of cancellation, even though the consumer at no stage pleaded that the contract was void before the competent national courts.

**Directive 90/314/EEC**

Case	Year	Topics discussed regarding consumer protection
C-430/13 Baradics and Others	2014	<p>1. Article 7 of the Package Travel Directive must be interpreted as precluding national legislation where the detailed rules laid down therein do not achieve the result of ensuring that the consumer is provided with an effective guarantee of the refund of all money paid over and repatriation in the event of insolvency on the part of the travel organiser. It is for the referring court to establish whether that is the case as regards the national legislation at issue in the dispute before it.</p> <p>2. Article 7 of the Package Travel Directive must be interpreted as meaning that a Member State has no discretion as regards the ambit of the risks that fall to be covered by the security to be provided by the travel organiser or retailer for the benefit of consumers. It is for the referring court to determine whether the criteria laid down by the Member State concerned for setting the amount of the security have the object or effect of limiting the ambit of the risks that fall to be covered by the security, in which case they would clearly be incompatible with the obligations under the directive and would constitute a sufficiently serious infringement of EU law which, subject to a finding of a direct causal link, might give rise to liability on the part of the Member State concerned.</p>
C-134/11 Blödel-Pawlik	2012	Article 7 of the Package Travel Directive is to be interpreted as covering a situation in which the insolvency of the travel organiser is attributable to its own fraudulent conduct.

**Directive 97/7/EEC**

Case	Year	Topics discussed regarding consumer protection
C-49/11 Content Services	2012	Article 5(1) of the Distance Contract Directive must be interpreted as meaning that a business practice consisting of making the information referred to in that provision accessible to the consumer only via a hyperlink on a website of the undertaking concerned does not meet the requirements of that provision, since that information is neither 'given' by that undertaking nor 'received' by the consumer, within the meaning of that provision, and a website such as that at issue in the main proceedings cannot be regarded as a 'durable medium' within the meaning of Article 5(1).
C-511/08 Heinrich Heine	2010	Article 6(1), first subparagraph, second sentence, and Article 6(2) of the Distance Contract Directive must be interpreted as precluding national legislation which allows the supplier under a distance contract to charge the costs of delivering the goods to the consumer where the latter exercises his right of withdrawal.

**Directive 98/6/EEC**

Case	Year	Topics discussed regarding consumer protection
C-476/14 Citroën Commerce	2016	Article 3 of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, read in conjunction with Article 1 and Article 2(a) of that directive, must be interpreted as meaning that costs in connection with the transfer of a motor vehicle from the manufacturer to the dealer, which are payable by the consumer, must be included in the selling price of that vehicle indicated in an advertisement made by the trader when, having regard to all the features of that advertisement, in the eyes of the

Case	Year	Topics discussed regarding consumer protection
		consumer it sets out an offer concerning that vehicle. It is for the referring court to determine whether all those conditions are satisfied.

C-434/15 Uber Systems SpainSL: The service provided by Uber connecting individuals with non-professional drivers is covered by services in the field of transport.

C-131/12 Google Spain SL, Google Inc. vs Agencia Española de Protección de Datos (AEPD), Mario Costeja González: An internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties









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This paper contains an analysis of the legal aspects of protecting European consumers, advanced during the 7th and 8th legislative period of the European Parliament (2009 - 2019). It examines policy developments in the area of consumer protection and (digital) single market, and identifies new substantive rights offered to EU consumers.

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