CONSUMER PROTECTION MEASURES

European measures for consumer protection aim to protect the health, safety and economic and legal interests of European consumers, wherever they live, travel or shop in the EU. EU provisions regulate both physical transactions and e-commerce, and contain rules of general applicability together with provisions targeting specific products, including drugs, genetically modified organisms, tobacco products, cosmetics, toys and explosives.

LEGAL BASIS

Articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

— to ensure that all consumers in the Union, wherever they live, travel or shop in the EU, enjoy a high common level of protection against risks and threats to their safety and economic interests;
— to increase the ability of consumers to defend their own interests.

ACHIEVEMENTS

A. Protection of consumers’ health and safety
1. EU actions in the field of public health and tobacco (5.5.3)
2. Foodstuffs (5.5.5)
3. Medicinal products (5.5.4)
4. General Product Safety System and market surveillance

Directive 2001/95/EC provides for a General Product Safety System whereby any consumer product put on the market, even if it is not covered by specific sector legislation, must meet certain standards relating to the provision of information to consumers, measures to avoid threats to safety, monitoring of product safety, and traceability. If a product poses a serious threat necessitating quick action, the relevant Member State must immediately inform the Commission via RAPEX, a system for the rapid exchange of information between Member States and the Commission.

5. Safety of cosmetic products, explosives for civilian use and toys

The Cosmetics Directive (Council Directive 76/768/EEC), together with all the amendments thereto and adaptations thereof, has been replaced by the Cosmetic Products Regulation (Regulation (EC) No 1223/2009). The regulation ensures the safety of cosmetic products, together with consumer protection, by providing for ingredient inventories and informative labelling. Most provisions of the new regulation were applicable by 11 July 2013. Safety requirements for explosives for civilian use and similar products (such as pyrotechnic articles)
are set out in Directives 93/15/EEC, 2008/43/EC and 2004/57/EC, and in Decision 2004/388/EC, recently recast by the Explosives for Civil Uses Directive (2014/28/EU) and further by the Pyrotechnic Articles Directive (2013/29/EU). Toy safety requirements (e.g. mechanical danger, toxicity and flammability, toys in food) are laid down in Directive 2009/48/EC; the European Committee for Standardisation (CEN) revises and develops the relevant standards.

6. European surveillance and information exchange systems

Decisions 93/683 and 93/580 established the European Home and Leisure Accident Surveillance System (EHLASS) for the collection of data on accidents occurring in the home or during leisure activities, and the Community system for the exchange of information in respect of certain products which may jeopardise consumers’ health or safety (excluding pharmaceuticals and products for trade use).

B. Protection of consumers’ economic interests

1. Information society services, electronic commerce and electronic and cross-border payments

Directive 2000/31/EC (the E-Commerce Directive) covers the liability of providers (established in the EU) of online services (between enterprises, between enterprises and consumers, and those provided free to the recipient which are financed, for example, by advertising income or sponsoring), online electronic transactions (interactive telesales of goods and services and, in particular, online purchasing centres), and other online activities, such as the provision of news, database and financial services, professional services (e.g. those of solicitors, doctors, accountants and estate agents), entertainment services (video on demand), direct marketing and advertising services and internet access. Directive 97/5/EC on cross-border credit transfers and Regulation (EC) No 2560/2001 on cross-border payments ensure that charges for cross-border payments in euros (cross-border credit transfers, cross-border electronic payment transactions and cross-border cheques) are the same as those for payments made in that currency within a Member State.

2. TV without frontiers

Directive 89/552/EEC (as amended by Directive 2007/65/EC) ensures the free movement of broadcasting services while preserving certain public-interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. Its provisions relate to, for example, advertisements for alcoholic beverages, tobacco and medicines, teleshopping, and programmes involving pornography or extreme violence. Events of major importance for society are to be broadcast freely in unencoded form, even if exclusive rights have been purchased by pay-TV channels.

3. Distance selling contracts and contracts negotiated away from business premises, the sale of goods and guarantees, and unfair terms in contracts


Directive 2002/65/EC regulates the distance marketing of consumer financial services.
4. **Unfair commercial practices, and comparative and misleading advertising**

Directive 2005/29/EC on unfair commercial (business-to-consumer) practices prohibits misleading and aggressive practices, ‘sharp practices’ (such as pressure selling, misleading marketing and unfair advertising) and practices which use coercion as a means of selling (irrespective of the place of purchase or sale). It includes criteria for determining aggressive commercial practices (harassment, coercion and undue influence) and a ‘blacklist’ of unfair commercial practices. Directive 2006/114/EC concerning misleading and comparative advertising prohibits misleading advertisements. It also lays down the conditions under which comparative advertising is permitted. A Commission communication of 27 November 2012 (COM(2012) 0702) proposed a review of Directive 2006/114/EC to tackle the loopholes in the text and focus on the problem of misleading directory companies.

5. **Liability for defective products and price indication**

Directive 85/374/EEC, modified by Directive 99/34/EEC, establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. The injured consumer seeking compensation needs to prove the damage, a defect in the product and a causal link, within three years. Directive 98/6/EC on unit prices obliges traders to indicate sale prices and prices per measurement unit in order to improve and simplify comparisons of price and quantity between products on the market.

6. **Consumer credit**

Directive 2008/48/EC aims to ensure uniformity in the level of protection of the rights enjoyed by consumers in the single market. It provides for a comprehensible set of information to be given to consumers in good time before the contract is concluded and also as part of the credit agreement. Creditors have to use the same Standard European Consumer Credit Information, i.e. a form containing all relevant information about the contract, including the cost of credit and the annual percentage rate charged. Consumers are allowed to withdraw from a credit agreement without giving any reason within a period of 14 days after the conclusion of the contract. They also have the possibility of repaying their credit early at any time, while the creditor can ask for fair and objectively justified compensation.

7. **Package holidays and timeshare properties**

Directive 90/314/EEC protects consumers purchasing package holidays within the EU. Directive 2008/122/EC on timeshare, long-term holiday products, resale and exchange covers the trader’s obligation to provide information on the constituent parts of the contract, and the consumer’s right to withdraw without any costs and without giving any reason, within 14 calendar days. The directive also contains a checklist of pre-contractual information, involving the use of standard forms available in all EU languages. On 12 March 2014 Parliament adopted the proposal for a directive on package travel and assisted travel arrangements, which will repeal Directive 90/314/EEC.

8. **Air transport**

Regulations (EC) No 261/2004 and (EC) No 2027/97 (as amended) established common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long flight delays, and on air carrier liability (passenger and baggage) in the event of accident. Regulation (EEC) No 2299/89 (as amended) on computerised reservation systems (CRS) for air transport products established obligations for system vendors (to allow all carriers to participate on an equal basis) and for carriers (to communicate with equal care and timely information to all systems). Regulation (EC) No 2409/92 introduced common criteria and procedures for establishing the air fares and air cargo rates charged by air carriers on air services within the
Community. Regulation (EC) No 2320/2002 (as amended) introduced common rules in the field of civil aviation security standards following the terrorist attacks of 11 September 2001.

9. European Consumer Centres Network (ECC-Network or ‘Euroguichets’)

The ECC-Network provides consumers with information and assistance in respect of cross-border transactions. This network also works with other European networks, notably FIN-NET (financial), SOLVIT (internal market) and the European judicial network in civil and commercial matters.

C. Protection of consumers’ legal interests

1. Alternative dispute resolution procedures and online dispute resolution

Alternative dispute resolution (ADR) procedures are out-of-court settlement mechanisms that help consumers and traders solve conflicts, mostly through a third party, e.g. a mediator, arbitrator or ombudsman. Recommendation 98/257/EC, Decision 2004/2004/EC and Council Resolution 2000/C 155/01 of 25 May 2000 lay down the principles to be followed in ADR proceedings, aimed at guaranteeing the individual consumer cheaper and faster remedies. Directive 98/27 on injunctions for the protection of consumers’ interests (as amended) harmonises existing EU and national law and, in order to protect the collective interests of consumers, introduces the ‘action for injunctions’, which can be opened at the competent national court level against infringements by commercial operators from other countries. Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes gives consumers the possibility of turning to quality alternative dispute resolution entities for all kinds of contractual dispute with businesses over an online or offline, domestic or cross-border purchase.

Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution enables EU consumers and traders to submit disputes arising from online purchases for ADR online, through the EU-wide dispute resolution platform which in future will link all the national ADR entities and serve as a single entry point.

2. European judicial network in civil and commercial matters and obligation for national authorities to cooperate

Decision 2001/470/EC established a European judicial network to simplify the life of citizens facing cross-border litigation by improving the mechanisms for judicial cooperation between Member States in civil and commercial matters and providing them with practical information to facilitate their access to justice. Regulation (EC) No 2006/2004 established a network of national authorities responsible for the effective enforcement of EU consumer protection law and, since 29 December 2005, has obliged them to cooperate in guaranteeing the enforcement of EU law and, in the case of intra-EU infringements, to stop any infringement by means of appropriate legal instruments such as injunctions.

ROLE OF THE EUROPEAN PARLIAMENT

The codecision procedure and the widening of the areas of legislation to be adopted under the qualified majority voting procedure in the Council have given Parliament the power to be actively involved in developing and strengthening EU consumer protection legislation while balancing the interests of the markets with those of consumers. For instance, on 23 June 2011 Parliament adopted by an overwhelming majority (615 for, 16 against, 21 abstentions) the Consumer Rights Directive, which strengthened consumer rights in respect of distance and off-premises contracts, introduced greater price transparency, prohibited pre-ticked boxes and clarified the provision of information on digital content, with a view to boosting the confidence
of European consumers. On 13 February 2013, at Parliament’s request, the Commission presented the Product Safety and Market Surveillance Package, aimed at improving market surveillance systems in the Member States. Parliament adopted the package in plenary on 15 April 2014. Parliament also played a pivotal role in broadening the scope of online dispute resolution regulation in order to provide Europeans with easily accessible and inexpensive ways of resolving legal disputes.

As well as adopting legislation, Parliament regularly debates consumer protection issues, leading to non-legislative resolutions such as that of 4 February 2014 on the implementation of the Unfair Commercial Practices Directive, and that of 23 October 2012 on passenger rights in all transport modes.

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