



## Kristin Nemeth - The Consumer Rights Directive

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# Welcome ...



# The Consumer Rights Directive (CRD): hard facts (1)

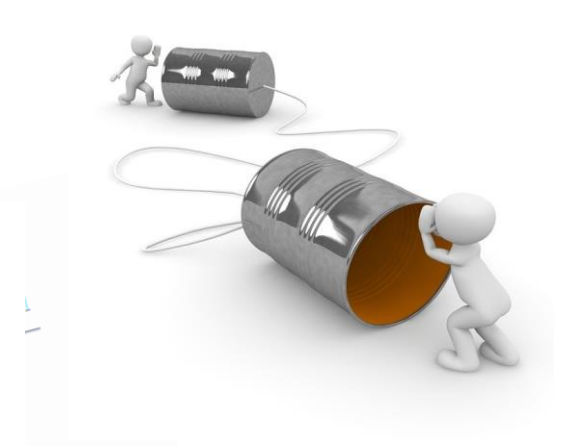
- » **Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council**
- » 67 Recitals, six chapters, 35 Articles, Annex I (model forms), Annex II (correlation table)
- » Chapter I (subject matter, definitions, scope), Chapter II (consumer information for other contracts), Chapter III (consumer information and right of withdrawal for distance and off-premises contracts), Chapter IV (other consumer rights) Chapters V (general provisions) and Chapter VI (final provisions)
- » transposition date Dec 13, 2013 - applied to contracts concluded after June 13, 2014 (Article 28 CRD)
- » for the national implementations see the [official webpage](#)
  - example Austria: separate act and some alignments in the General Civil Code and Consumer Protection Code
  - example Germany: incorporated into the BGB
- » amended by **Directive (EU) 2015/2302 of 25 November 2015 on package travel and linked travel arrangements ...** ([package travel directive](#))
  - only adapting the notion of package travel and linked travel arrangements in Point (g) of Art 3 (3) CDR

# The Consumer Rights Directive (CRD): hard facts (2)

- » amended by **Directive (EU) 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules better enforcement and modernization of Union consumer protection rules ([Omnibus directive](#))** as a result of the “[Review of EU consumer law - New Deal for Consumers](#)”
- » → [consolidated text of the CRD](#) (transposition by Nov 28, 2021, application from May 28, 2022; see Art 7)
  - Austrian implementation law a little late, finally entered into force July 20, 2022
  - Germany: timely entering into force of the “Gesetz zur Umsetzung der Modernisierungsrichtlinie changes in §§ 312 ff BGB
- » accompanied by a [new Commission Notice](#) on the interpretation and application of the Consumer Rights Directive (as announced in the New Consumer Agenda) replacing the [Guidance document on the Consumer Rights Directive from 2014](#).

# The Consumer Rights Directive in a nutshell

- » aims at providing a **high level of consumer rights** across the EU
- » **modernises** already existing EU consumer law (Art 31-33)
  - repealing the doorstep and distance selling directives and amending the unfair terms and sale of goods directive (→ Directive 77/19/EU)
- » **aligns** and **harmonises** national consumer rules
- » is of **imperative** nature (Art 25)
  - i.e. cannot be amended by party agreement
- » aims at a **full harmonisation** (Art 4)
  - no national divergences allowed, unless provided in the directive (reporting system)
- » establishes a **right of withdrawal for DC and OPC** (Art 9 ff)
  - exceptions (Art 16), information (Art 10), exercise of right (Art 11), effects (Art 12 ff)
- » sets forth various **information requirements** (Art 5, 6 ff)
- » establishes **other consumer rights** (Art 17 ff)
  - e.g. delivery (Art 18), passing of risk (Art 20)



# The Consumer Rights Directive: aims

(5) The cross-border potential of distance selling, which should be one of the main tangible results of the internal market, is not fully exploited. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential for further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector, for instance utilities, the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium-sized enterprises (including individual traders) or agents of direct selling companies

should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to a high level of consumer protection and a better functioning of the business-to-consumer internal market.

developments between 2011 and 2024 partly changed the perspectives → new agenda (2025-2030 Consumer Agenda)



**Shaping  
the future  
together**

Samen de toekomst vormgeven  
Façonons l'avenir ensemble



What has already changed and might change in the future?

sustainability

right to repair



What has already changed and might change in the future?

obsolescence

shortages

.....



# The Consumer Rights Directive: main focus today



## Article 3

### Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

3. This Directive shall not apply to contracts:



## CHAPTER III

### CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL FOR DISTANCE AND OFF-PREMISES CONTRACTS

#### Article 6

#### Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

(h) where a right of withdrawal exists, the limit and procedures for exercising that right with Article 11(1), as well as the model set out in Annex I(B);

(i) where applicable, that the consumer will have the cost of returning the goods in case of withdrawal on distance contracts, if the goods, by their nature, normally be returned by post, the cost of the goods;



#### Article 9

#### Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to

# The Consumer Rights Directive: original Scope of Application



## Article 3

### Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

3. This Directive shall not apply to contracts:

- (a) for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care;
- (b) for healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU, whether or not they are provided via healthcare facilities;



(c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;

(d) for financial services;

(e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;

(f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;

(g) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(1)</sup>;

(h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts <sup>(2)</sup>;



HOLIDAYS



# The Consumer Rights Directive: Scope of Application 2015



## Article 3

### Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

3. This Directive shall not apply to contracts:

(a) for social services, including social housing, childcare and support of families and persons temporarily in need;

(b) for healthcare via healthcare

(g) on packages as defined in point 2 of Article 3 of Directive (EU) 2015/2302 of the European Parliament and of the Council. Article 6(7), Article 8(2) and (6) and Articles 19, 21 and 22 of this Directive shall apply mutatis mutandis to packages as defined in point 2 of Article 3 of Directive (EU) 2015/2302 in relation to travellers as defined in point 6 of Article 3 of that Directive.

(c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;

(d) for financial services;

(e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;

(f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;

(g) which fall within the scope of Directive 90/314/EEC of 13 June 1990 on the approximation of the laws, regulations, directives and administrative provisions of the Member States relating to the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts<sup>(2)</sup>;



HOLIDAYS



# The Consumer Rights Directive: Scope of Application after May 2022

## Article 3

### Scope

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity, heating, including by public providers, and to contracts for commodities are provided.

(c) for gambling, which is not a pecuniary interest;

(c) for gambling, which is not a pecuniary interest, to any contract concluded between a trader and a consumer, to the extent set out in its provisions, to any contract for the supply of water, gas, electricity or district heating, including by public providers, and to contracts for commodities are provided on a contractual basis.

2. If a contract is concluded between a trader and a consumer, the provisions of this Directive shall apply to it, including by public providers, to the extent that these commodities are provided on a contractual basis.

This Directive shall apply to the following:

1a. This Directive shall also apply where the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content which is not supplied on a tangible medium or digital service in accordance with this Directive or for allowing the trader to comply with legal requirements to which the trader is subject, and the trader does not process those data for any other purpose.

(h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts<sup>(2)</sup>;



HOLIDAYS



# The Consumer Rights Directive: Scope of Application

3. This Directive shall not apply to contracts:



(j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;



(k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22:

Articles 19, 21 and 22

(l) concluded by means of automatic vending machines or automated commercial premises;



(m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.



(n) For any goods sold by way of execution or otherwise by authority of law 19, 20 and 21

4. Member States may decide not to apply this Directive or not to maintain or introduce corresponding national provisions to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. Member States may define a lower value in their national legislation.

5. This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.

6. This Directive shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided for in this Directive.



# The Consumer Rights Directive: Scope of Application

22.11.2011

## » personal scope (Art 3 para 1)

- between a **consumer**; see **Art 2 para 1**
- and a **trader** ; see **Art 2 para 2**

## » substantive scope (Art 3 para 1 and 2)

- „any“ contract
- but the ones mentioned in **Art 3 para 3**



# The Consumer Rights Directive: natural person



## Article 2

### Definitions

For the purpose of this Directive, the following definitions shall apply:

- (1) **'consumer'** means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

Do you think it is problematic that the Austrian implementation (§ 1 para 1 FAGG) refers to consumers according to the Austrian consumer protection code also including artificial persons?

yes

no

## Article 4

### Level of harmonisation

Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.

See C-329/19, *Condominio di Milano*, para 34

# The Consumer Rights Directive: dual purpose

## Article 2

### Definitions

For the purpose of this Directive, the following definitions shall apply:

(1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

(17) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, 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.

What if a person uses the good he purchases for both private as well as professional matters?

Is she then still a consumer?

yes

no

See C-105/17, *Kamenova*, para 33





# The Consumer Rights Directive: trader

## *Article 2*

### **Definitions**

For the purpose of this Directive, the following definitions shall apply:

- (2) 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

C-105/17, *Kamenova*, paras 27 – 29, 34: case by case assessment, list of indicative criteria, identical to the notion of trader in the UCPD

# The Consumer Rights Directive: contracts covered

*market stalls, a trade fair, the train station?*

## » Depending on the circumstances of conclusion

- off-premises contracts, Art 2 para 8
- distance contracts, Art 2 para 7
- on-premises contracts, for premises see Art 2 para 9

## » Depending on the type of contract

- sales contracts, Art 2 para 5: transfer of ownership
- services contracts including contracts for digital services Art 2 para 6
- contracts for online digital content
- contracts for the supply of public utilities, Art 3 para 1



Why is a clear classification important?

See Art 9 CRD: beginning of withdrawal period;  
Pre-contractual rights, button solution

# The Consumer Rights Directive: contracts covered

## » Does the Consumer Rights Directive apply?

- Trader gives away free samples.
- Consumer pays a service with a voucher.
- Consumer rents a car.
- Consumer uses an app after a free trial period.
- Consumer uses public utilities free of charge.
- Consumer uses a free online service.

- What about mixed purpose contracts?

C-208/19, NK, paras 58 – 59

- A maintenance contract which is concluded on the occasion of the purchase of a car which is free of charge
- A personal guarantee



# The Consumer Rights Directive: contractual aspects concerned

## *Article 3*

### **Scope**

5. This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.

Only certain contractual aspects are regulated, the rest is (still) subject to national contract and consumer law

# The Consumer Rights Directive: Pre-contractual information

## CHAPTER II

### CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS

#### Article 5

#### Information requirements for contracts other than distance or off-premises contracts

1. Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

#### Article 7

#### Formal requirements for off-premises contracts

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.



## CHAPTER III

### CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL FOR DISTANCE AND OFF-PREMISES CONTRACTS

#### Article 6

#### Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

#### Article 8

#### Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.



# The Consumer Rights Directive: pre-contractual information

**Art 5:** *Information requirements for contracts other than distance or off-premises contracts*

**Art 6:** *Information requirements for distance and off-premises contracts*

**Art 6a:** *Additional specific information requirements for contracts concluded on online marketplaces*

**Art 7:** *Formal requirements for off-premises contracts*

**Art 8:** *Formal requirements for distance contracts*



# The Consumer Rights Directive: Pre-contractual information

## Article 5: Information requirements for contracts other than distance or off-premises contracts

1. **Before the consumer is bound** by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner, if that information is not already apparent from the context:**

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;
- (c) the **total price** of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;
- (e) in addition to a reminder of the existence of the legal guarantee of conformity for goods, digital content and digital services, the existence and the conditions of after-sales services and commercial guarantees, where applicable**
- (f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

new

# The Consumer Rights Directive: Pre-contractual information

## Article 5: Information requirements for contracts other than distance or off-premises contracts

1. Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner, if that information is not already apparent from the context:**

**(g) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital services;**

**(h) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of.**

2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.

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.

new

Opt-outs



# The Consumer Rights Directive: Pre-contractual information

## Article 6: Information requirements for distance and off-premises contracts

1. **Before the consumer is bound** by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner**:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

(b) the identity of the trader, such as his trading name;

**(c) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting;**

(d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;

new

# The Consumer Rights Directive: Pre-contractual information

## Article 6: Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner**:

(e) the **total price** of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;

ea) **where applicable, that the price was personalised on the basis of automated decision-making;**

(f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;

(g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy

new

# The Consumer Rights Directive: Pre-contractual information

## Article 6: Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner**:

(h) **where a right of withdrawal exists**, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);

(i) where applicable, that the consumer will have to bear the **cost of returning the goods** in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;

(j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);

(k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;

**(l) a reminder of the existence of a legal guarantee of conformity for goods, digital content and digital services;**

(m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;

new

# The Consumer Rights Directive: Pre-contractual information

## Article 6: Information requirements for distance and off-premises contracts

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information **in a clear and comprehensible manner**:

(n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable;

(o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

(p) where applicable, the minimum duration of the consumer's obligations under the contract;

(q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

**(r) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital services;**

**(s) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of;**

(t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it

new

# The Consumer Rights Directive: Pre-contractual information

## Article 6: Information requirements for distance and off-premises contracts

2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.
3. In the case of a public auction, the information referred to in points (b), (c) and (d) of paragraph 1 may be replaced by the equivalent details for the auctioneer.
- 4. The information referred to in points (h), (i) and (i) of paragraph 1 of this Article may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 of this Article if the trader has supplied these instructions to the consumer, correctly filled in. The references to the withdrawal period of 14 days in the model instructions on withdrawal set out in Annex I(A) shall be replaced by references to a withdrawal period of 30 days in cases where Member States have adopted rules in accordance with Article 9(1a).**
5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.
6. **If the trader has not complied with the information requirements on additional charges or other costs** as referred to in point (e) of paragraph 1, or on the **costs of returning the goods** as referred to in point (i) of paragraph 1, the consumer shall not bear those charges or costs.

new

# The Consumer Rights Directive: Pre-contractual information

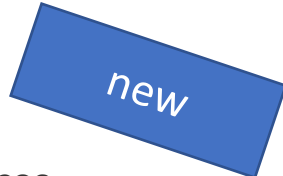
## Article 6: Information requirements for distance and off-premises contracts

Opt-outs

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
8. The information requirements laid down in this Directive are **in addition to** information requirements contained in Directive 2006/123/EC and Directive 2000/31/EC and **do not prevent Member States from imposing additional information requirements in accordance with those Directives.** Without prejudice to the first subparagraph, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail.
9. As regards compliance with the information requirements laid down in this Chapter, the **burden of proof** shall be on the trader.



# The Consumer Rights Directive: Pre-contractual information



## Article 6a: Additional specific information requirements for contracts concluded on online marketplaces

1. Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, provide the consumer with the following information in a clear and comprehensible manner and in a way appropriate to the means of distance communication:

(a) general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented, on the main parameters determining ranking, as defined in point (m) of Article 2(1) of Directive 2005/29/EC, of offers presented to the consumer as a result of the search query and the relative importance of those parameters as opposed to other parameters;

(b) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace;

(c) where the third party offering the goods, services or digital content is not a trader, that the consumer rights stemming from Union consumer protection law do not apply to the contract;

(d) where applicable, how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law.

2. Without prejudice to Directive 2000/31/EC, this Article does not prevent Member States from imposing additional information requirements for providers of online marketplaces. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.

# The Consumer Rights Directive: Pre-contractual information

## Article 7: Formal requirements for distance and off-premises contracts

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.
2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.
3. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make such an express request on a durable medium and request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.



# The Consumer Rights Directive: Pre-contractual information

## Article 7: Formal requirements for off-premises contracts

4. With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed **EUR 200**:

(a) the trader shall provide the consumer with the information referred to in points (b) and (c) of Article 6(1) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (h) and (k) of Article 6(1), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;

(b) the confirmation of the contract provided in accordance with paragraph 2 of this Article shall contain the information provided for in Article 6(1).

**Member States may decide not to apply this paragraph.**

5. Member States **shall not impose any further formal pre-contractual information requirements** for the fulfilment of the information obligations laid down in this Directive.

Opt-outs

# The Consumer Rights Directive: Pre-contractual information



## Article 8: Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

2. If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1).

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with 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 shall not be bound by the contract or order.

3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

# The Consumer Rights Directive: Pre-contractual information

## Article 8: Formal requirements for distance contracts

new

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on or through that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to, respectively, in points (a), (b), (e), (h) and (o) of Article 6(1) except the model withdrawal form set out in Annex I(B) referred to in point (h). The other information referred to in Article 6(1), including the model withdrawal form, shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

5. Without prejudice to paragraph 4, if the trader makes a **telephone** call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

6. Where a distance contract is to be **concluded by telephone**, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

# The Consumer Rights Directive: Pre-contractual information

## Article 8: Formal requirements for distance contracts

new

7. The trader shall provide the consumer with the confirmation of the contract concluded, on a **durable medium** within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

(a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and

(b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

8. **Where a consumer wants the performance of services**, or the **supply of water, gas or electricity**, where they are not put up for sale in a limited volume or set quantity, or of district heating, **to begin during the withdrawal period** provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make an **express request and request** the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.

9. ....

# The Consumer Rights Directive: Pre-contractual information

- » Which information?
- » How does the information have to be given?
- » Sanctions if the required information is not provided?



## Article 10

### Omission of information on the right of withdrawal

1. If the trader has not provided the consumer with the information on the right of withdrawal as required by point (h) of Article 6(1), the withdrawal period shall expire 12 months from the end of the initial withdrawal period, as determined in accordance with Article 9(2).

2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days after the day upon which the consumer receives that information.



2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days or, in cases where Member States have adopted rules in accordance with Article 9(1a), 30 days after the day upon which the consumer receives that information.

new

# The Consumer Rights Directive: The Right of Withdrawal

## Article 9: Right of Withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have 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 provided for in Article 13(2) and Article 14.

1a. Member States may adopt rules in accordance with which the withdrawal period of 14 days referred to in paragraph 1 is extended to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such rules shall be proportionate, non-discriminatory and justified on grounds of consumer protection. (b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

2. Without prejudice to Article 10, the **withdrawal period** referred to in paragraph 1 of this Article shall expire after 14 days or, in cases where Member States have adopted rules in accordance with paragraph 1a of this Article, 30 days from:

(a) **in the case of service contracts, the day of the conclusion of the contract;**

new

# The Consumer Rights Directive: The Right of Withdrawal

## Article 9: Right of Withdrawal

(b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:

(i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;

(ii) in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;

(iii) in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;

(c) in the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.

3. The Member States shall not prohibit the contracting parties from performing their contractual obligations during the withdrawal period. Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract.

# Workshop: Consumer Cases

- » We will take several sets of facts as a basis for discussion.
- » recent case law
- » The cases will be allocated to groups for discussion
  - app 20 minutes for each case
  - short presentation of the case and the solutions afterwards





# Case 1



The defendant is the owner of an apartment in Innsbruck (condominium). The city house where the apartment situated on the 2<sup>nd</sup> floor was built in 1900. Defendant uses the apartment for residential purposes together with his wife and children. He has no office in the apartment but sometimes uses it in the evening to finish some work.

On June 29<sup>th</sup>, 2018, claimant presented an offer to defendant to renovate and modernise the apartment for the amount of € 52.935,35 incl VAT. The offer included construction work, floor and wall coating, organisation of the work, chimney restoration, electricity and sanitary installations and stated a standard fixed price for the package. Defendant signed this offer in claimant's premises.

The actual costs exceeded the calculation. During the building site defendant gave additional instructions (e.g. more expensive sanitary installations). The relevant agreements had been made on the 13<sup>th</sup> August, 29<sup>th</sup> August and 15<sup>th</sup> September. After completion of the work in October, defendant refused to pay the additional costs and referred to his right of withdrawal under the relevant Austrian implementation of Art 9 CRD. Information on the right of withdrawal had not been given.

**What do you think? Please consider the scope of application of the CRD in general as well as the relevant exceptions and the exceptions to the right of withdrawal. Is this an on- or off-premises contract?**

## Case 2

On 25 November 2018 claimant ordered, for private purposes, a mattress from Nicedreams' website, at a price of € 1.094,52. The General Terms and Conditions of Sale were printed on the invoice issued by Nicedreams and contained inter alia a 'notice of withdrawal for consumers' worded as follows: 'We will not bear the costs of returning the goods. ... Your right of withdrawal shall cease prematurely in the following cases: in the case of contracts for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, if they were unsealed after delivery'.

When it was supplied, the mattress ordered by defendant was covered with a protective film, which he subsequently removed. By email of 9 December 2020, defendant informed Nicedreams that he wished to return the mattress and asked Nicedreams to arrange the return transport at their costs. Since that return transport was not arranged by Nicedreams, Claimant assumed the transport costs himself, in the sum of € 95,59.

Claimant brought an action before the Amtsgericht Mainz (Local Court, Mainz, Germany) seeking reimbursement by Nicedreams of the purchase price and the transport costs of the mattress, in the total amount of EUR 1 190.11 euros, plus interest and legal costs. By judgment of 26 November 2019 of the Amtsgericht Mainz (Local Court, Mainz), that action was allowed. By judgment of 10 August 2020, the Landgericht Mainz (Regional Court, Mainz, Germany) upheld that decision on appeal. Nicedreams brought an appeal on a point of law (Revision) before the referring court, the Bundesgerichtshof (Federal Court of Justice, Germany).



**Is there a right of withdrawal? What is your view on the return costs?**

## Case 3

Defendant is the owner of an apartment which he wants to sell. Because of a leaflet which Claimant had distributed in various houses he became aware of the services of Claimant, an estate agent. After a phonecall Defendant and Claimant met in the apartment. Claimant explained his conditions (3 % of the sales price + VAT) and showed the „exclusive agency agreement“.

A few days later Defendant phoned Claimant and told him that he wanted to sign the agreement.

Claimant went to the apartment again to take pictures and explained various details of the agreement to Defendant via Phone (e.g. about the exclusiveness).

The agreement was signed after a few days in Claimant’s office. Upon this appointment the Parties also talked about the withdrawal right and the request to start the service immediately and the consequence of losing the right to withdraw resulting therefrom.

Because of Claimant’s activity a buyer was found and the apartment was sold for € 295.000. Defendant refused to pay the fee relying on his right to withdraw.

Rightfully?



# Case 4



DB Vertrieb, which is part of the Deutsche Bahn AG group, markets the cards 'BahnCard 25' and 'BahnCard 50' as intermediary of DB Fernverkehr AG. Those cards permit the holder to obtain reductions of 25% or 50% on the price of DB Fernverkehr's train tickets. The 'BahnCard 25' may be ordered online. No information relating to the consumer's right of withdrawal is provided on DB Vertrieb's website.

Verbraucherzentrale Berlin, a consumer protection association, brought an action for an order requiring DB Vertrieb to cease offering that reduction card on its website in the course of trade without providing, prior to the consumer's contractual commitment, information relating to the right of withdrawal that the consumer possesses and the corresponding model withdrawal form.

By judgment of 6 July 2017, the court of first instance dismissed the action. It held that the contract at issue in the main proceedings is a 'contract for passenger transport services' within the meaning of Paragraph 312(2)(5) of the Civil Code, which transposes Article 3(3)(k) of Directive 2011/83. The court stated that, under those provisions, that contract is partially excluded from the directive's scope and, accordingly, the trader is not required to inform the consumer about the right of withdrawal. It observed that the provision of a transport service to a passenger involves the existence of a synallagmatic relationship with the price paid for that service, the reduction card entitling its holder to obtain the service concerned at a reduced price.

The referring court, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany), before which an appeal was brought, states, first of all, that, in its view, the contract at issue in the main proceedings falls within the scope of Directive 2011/83, in that it is a 'service contract' within the meaning of Article 2(6) of the directive. Referring to the first paragraph of Article 57 TFEU, it takes the view that the directive, in the light of its wording and purpose, also covers services provided to the consumer that take the form of a commitment or a right, such as the service at issue in the main proceedings, which enables the consumer subsequently to acquire passenger tickets at a reduced price.



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