

# European consumer law: the current legal framework

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Špelca Mežnar,  
Constitutional Court Judge, Slovenia





# EU Consumer Protection Law

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- EU consumer law has been developing for 50+ years
- numerous measures aimed at enhancing the position of consumer at the single European market
- one of the most important elements of the Consumer protection policy
- consumer expenditure of households accounts for 57 % of EU gross domestic product

# examples

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cancellation, delay of the flight, lost luggage – compensation, free meals, accomodation, refund – EU Passenger rights

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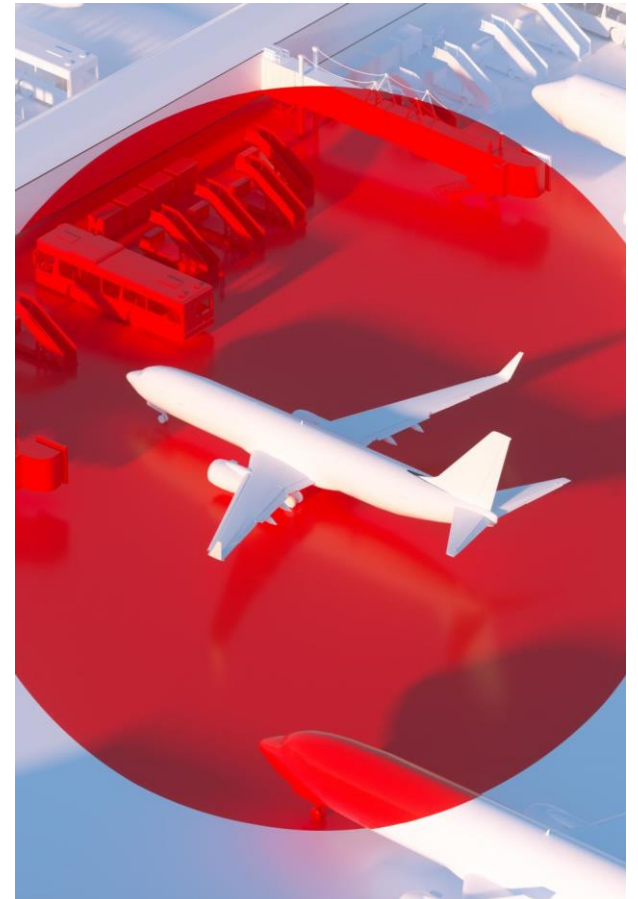
damages for the ruined holidays – all inclusive package travel

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no fees for across boarder roaming services within EU plus equal quality of mobile internet (5G Slovenia – Austria)

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EU wide cancellation right for online shopping



## Legal basis “constitutional basis” of CP in the EU

Rome Treaty (1957) -  
incidental reference to  
consumers - agricultural  
policy and competition  
policy

Single European Act (1987)  
– no changes

Treaty on the EU (1993) -  
separate Art (129a) on  
consumer protection, CP  
becomes an official  
policy of the EU

Amsterdam, Nice – Art  
129a becomes 153,  
“horizontal” nature of  
consumer protection policy

Lisbon Treaty: **Article 12** TFEU–  
consumer protection requirements  
shall be taken into account in defining  
and implementing other Union policies  
and activities; **Article 169** TFEU

# Art 169

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1. 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.

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 2(b).

4. Measures adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. The Commission shall be notified of them.

# consumer protection

as an internal market issue - a policy “tool”, a level playing field for bussines and traders

as a basic social right, part of the social safety net

physical transactions and e-commerce

current CP strategy: New Consumer Agenda 2020

# Consumer protection in the EU

a derivative of the proper functioning of the internal market

consumer welfare is structurally connected with establishing or ensuring the functioning of the internal market

- 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)
- achieving the consumer protection policy goals through Article 114

The internal market without boundaries = the ultimate goal of the EU consumer protection measures, with high and coherent standards established throughout the EU

# CP Law

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harmonisation

horizontal approach – many directives in different areas cover CP issues

some 90 directives currently dealing with consumer protection issues

huge influence on national legal orders

the world's most sophisticated framework for CP – but expensive and complicated

An area of shared competence between the EU and the MS

- principle of subsidiarity and proportionality
- but: lately (also) maximum harmonisation (UCP Directive, CRD)

Concept of minimum protection (minimum harmonisation, minimum standards): a floor not a ceiling – MS have the right to set higher standards than those set in the EU directive



# Current state - 5 core consumer rights

The right to health  
protection and  
safety

The right to  
protection of  
economic interests

The right to  
damages

The right to  
information and  
education

The right to  
representation

# CP applies in all phases of a B2C transaction

advertising/marketing of a product/service

A grey downward-pointing arrow indicating the flow from the first phase to the second.

concluding a contract

A grey downward-pointing arrow indicating the flow from the second phase to the third.

after sales follow up, dispute resolution, enforcement

# Unfair Commercial Practices Directive **2005/29/EC**

- protects consumers from traders' misleading and aggressive practices before, at and after conclusion of the B2C transaction
  - providing untruthful information to consumers
  - using aggressive marketing techniques to influence their choices

amended by:

- [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules, part of the "[Review of EU consumer law - New Deal for Consumers](#)" (since 28 May 2022)
- [Directive \(EU\) 2024/825](#) of 28 February 2024 on Empowering Consumers for the Green Transition (not yet in force)

interpreted by

- UCPD Guidance issued by the European Commission, Dec 2021

# Consumer Rights Directive 2011/83/EU

covers pre-contractual information

traders have to give consumers full transparency as to the total cost of a product or service they offer

also applies to some extent when the contract has been signed - it gives the consumer a EU right to withdraw from a purchase made online within 14 days

30-day delivery period

rights protecting consumers against excessive payments for services accompanying the main contract

maximum harmonisation approach

amended by Modernisation Directive ([Directive \(EU\) 2019/2161](#) of 27 November 2019)

# Unfair Contract Terms Directive

- forbids unfair terms in contracts. For example, a provision in the contract where consumers give up his/her right to get a deposit back cannot be 'hidden' in the small print at the bottom of a page.
- Contract terms must be drafted in plain, understandable language
- amended by Modernisation Directive ([Directive \(EU\) 2019/2161](#) of 27 November 2019)
- an obligation for Member States to provide for effective penalties in case of infringements

interpreted by

- **UCTS Guidance** issued by the European Commission, 2019
- rich case law of the Court of Justice of the European Union

# Consumer Sales Directive 2019/771

- the seller is liable to the consumer for any lack of conformity which exists at the time when the goods were delivered and which becomes apparent within two years of that time
- consumers can ask for the goods to be repaired, replaced, and reduced in price, or for the contract to be terminated
- amended by Modernisation Directive ([Directive \(EU\) 2019/2161](#) of 27 November 2019)
- supplemented by [Directive \(EU\) 2019/770](#) on certain aspects concerning contracts for the supply of digital content and digital services
- the right to remedy when digital content or a digital service is faulty.

# Price Indication Directive

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it ensures that the selling price and the price per unit of measurement (e.g. litre, kilo) are indicated for all products offered by traders to consumers, in order to improve consumer information and to facilitate comparison of prices

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the selling price must be clear, easily identifiable and easy to read on the tag

# Package Travel Directive

- 2015
- 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
- new consumer rights after the package starts (retailer responsible for the performance of the package, remedies for a lack of conformity)



# Mortgage Credit Directive

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2014

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credit agreements for consumers relating to residential immovable property

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consumer has at least seven days to assess offers or to withdraw

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the right to convert a credit agreement

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the right to early repayment

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the traders: the obligation to assess the creditworthiness of the consumer

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# The Directive on Alternative Dispute Resolution for Consumer Disputes

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- 2013
- consumers can, on a voluntary basis, submit complaints against traders to entities offering alternative dispute resolution procedures
- 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

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- 2013
- accompanying the directive
- introducing an ODR-platform launched in January 2016
- ODR-platform: an interactive web-interface that can be accessed electronically (for free or for a very small charge)
- allows the online out-of-court resolution of disputes between consumers and traders relating to online purchases of goods and services

# Directive (EU) 2019/2161 - Modernisation Directive

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amended four existing consumer law directives

- the Unfair Contract Terms Directive 93/13/EEC2 (the 'UCTD')
- the Price Indication Directive 98/6/EC3 (the 'PID')
- the Unfair Commercial Practices Directive 2005/29/EC4 (the 'UCPD')
- the Consumer Rights Directive 2011/83/EU5 (the 'CRD')

# Main amendments

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- Strengthened rules on penalties for infringements of the four directives
- New EU right to individual remedies for consumers who are harmed by unfair commercial practices prohibited by the UCPD
- Prohibition of specific unfair online practices regarding consumer reviews; advertising and paid placements in search results; resale of event tickets
- New transparency requirements (amendments to the UCPD and CRD)
- Extension of the application of the CRD to ‘free’ digital services for which consumers do not pay money but provide personal data, such as cloud storage, social media and email services

Consumers  
benefit from  
other  
actions and  
instruments

## Single Digital Market measures

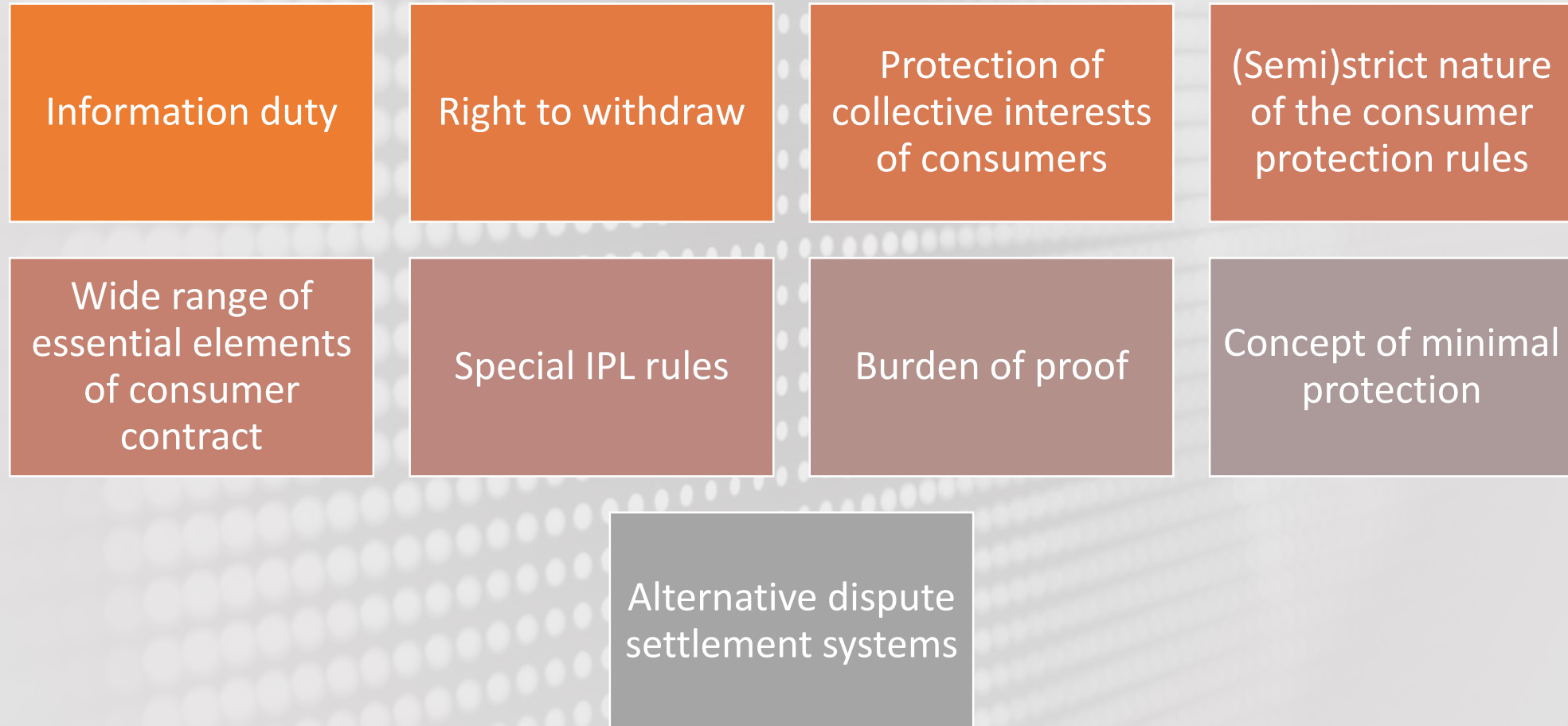
- the Regulations on Roaming Charges
- the Regulation on the Promotion of Internet Connectivity in Local Communities
- the Regulation on the Portability of Online Content
- the Cross- border Parcel Delivery Regulation
- the General Data Protection Regulation
- the Geo-blocking Regulation

also financial market measures, product safety (toys, electrical and electronic goods, cosmetics, chemicals)

# CP as Public and Private Law

- Through the directives in the field of consumer protection, EU has influenced both public law and private law orders of the MS's
- significantly changed legal orders of MS

# MAIN FEATURES S OF THE CONSUMER PROTECTION LAW





# The notion of CONSUMER

- dichotomic distinction of consumer v. trader (B2C)
- EU law strongly based on the concept of a weak consumer and strong trader
- unequal access to information and relative lack of negotiating power
- Distinguishing B2C and professional relations (B2B) is based on the assumption that B2B relations are characterised by a more balanced position of the parties, in terms of both the information access and the negotiating power
- market digitalisation and platformisation – is this still true?

# definition of a consumer

- any natural person who is acting for purposes which are outside his/her trade, business, craft or profession
- **two cumulative conditions:** (i) a natural person, and (ii) acts for non-professional purposes
- case C-329/19 *Condominio di Milano*: the concept of 'consumer' can be expanded by national case-law in such a way that its protective rules also apply to a contract between a trader and a subject of the law, which is not a natural person, such as the '*condominio*' (co-owners' association) in Italian law

# consumer

- 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
- Thus, a natural person who is acting for purposes which are *primarily* outside of his trade, business, craft or profession would also fall under the definition of 'consumer'
- a case-by-case assessment

# C-177/22 JA v. Würth Automotive GmbH

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- Austrian woman (claimant), whose partner was a car dealer, bought a car – which was re-sold shortly thereafter – from a German dealer (respondent)
- prior communications occurred between the claimant's partner and the respondent
- The contract for the sale of the car was concluded by the claimant, but the contract was expressly an agreement between two professionals
- application of art. 17 and 18 of the EU Regulation n. 1215/2012 – *forum actoris*
- preliminary question to the CJEU

a benchmark:  
an average  
consumer

average consumer is “reasonably well informed and reasonably observant and circumspect”

subj: taking into account the consumer’s social, cultural and linguistic factors

obj: without having regard to the effective knowledge of the consumer concerned

# case law of the CJEU

- in order to qualify somebody as a consumer, is it possible to take into account the (current or future) goals that this person had when entering into the contract? yes
- The characterization of somebody as a consumer depends on the professional/private goals behind the conclusion of a contract
- Protection is not deserved in cases where a contract is concluded with the goal of exercising a professional activity, even in the future
- when evaluating, in concreto, whether an individual shall be qualified as a consumer reference may be also made to the impression that the individual affirming to be a consumer generated in its counterparty. In particular, it is necessary to look at the behaviours that this individual had when dealing with the counterparty: whether the individual acted in such a way to generate in its counterparty the impression of having dealt with a professional.

# consumer v. trader

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- in practice, it is increasingly difficult to establish whether a person has the status of a consumer, or whether the status has already changed to that of a trader
- 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

# The role of CJEU

immense contribution to the understanding and development of CP

under preliminary question procedure – interplay between national courts and CJEU

national courts must apply EU law in consumer cases

national rules must be interpreted in conformity with EU law – loyal interpretation

national rules that contradict EU law must be set aside

procedural autonomy!

UCTD: stretching the information duty, formal, substantive and procedural transparency; quality, not quantity of information

far beyond wording of directive



# unfair contract terms

inventive  
interpretation by  
the CJEU

UCTD has no  
express procedural  
rules, yet the case  
law of the CJEU has  
clearly established  
them

# procedural aspects

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- limitation period in consumer credit contracts
  - the consumer's right to claim a declaration of unfairness is imprescriptible/perpetual
  - a limitation period can only be compatible with the principle of effectiveness if the consumer has had the opportunity to become aware of his rights before that period begins to run or expire
  - EU law requires national law to be constructed in such a way that time limits can only start to run if a consumer has been well informed of his or her particular legal position, and the consequences thereof
- ex officio application: national judge can and must assess ex officio the existence of unfair terms in the contract
- shifting burden of proof
- legal consequences of unfair terms

# Conclusion

CP in EU has come a long way

many directives, complex rules, simultaneous application of UE law and domestic rules (procedural)

importance of CJEU case law

challenges for national judges

not always an easy task



THANK YOU