

# General Consumer Law

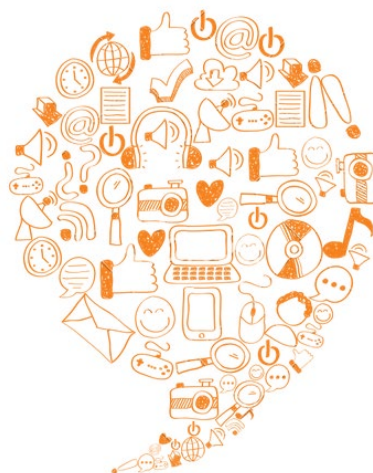
## Theoretical background document

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## INTRODUCTION TO THIS THEORETICAL BACKGROUND DOCUMENT



### Dear Reader,

This theoretical background document is part of the training resources developed for Consumer Pro, an EU initiative that aims at making consumer organisations and other actors in consumer policy better equipped to protect consumers in their country.

The goal of this document is to provide you and your teams with useful and relevant information on consumer rights. Its content has been prepared by BEUC policy experts in consumer rights, from a European perspective and in order to provide you with the keys to:

- Quickly train your teams of practitioners,
- Easily find pertinent information,
- Enable your staff to better inform consumers about their rights, and,
- Raise the awareness of your national ministries and authorities about consumer rights.

This theoretical background document forms part of a series of training resources. There are complementary theoretical background documents on Digital Rights and Sustainability.

The UK's exit from the EU on 31<sup>st</sup> December 2020 has had little impact on the information provided in this document because EU Directives have been implemented through domestic legislation. Any potential differences will be highlighted and relevant UK legislation will be indicated in the various sections. The latest information regarding EU Exit will be provided during your Consumer Pro training.

### About Consumer PRO

**Consumer PRO** is an initiative of the European Commission under the European Consumer Programme and implemented by BEUC – the European Consumer Organisation. Its aim is to build capacity of European consumer organisations and other actors in consumer policy through non-formal education. The project covers the EU Member States, Iceland and Norway.

For more information, please write to [Info@consumer-pro.eu](mailto:Info@consumer-pro.eu).

## 1. INTRODUCTION AND HISTORY OF CONSUMER POLICY

Following the creation of the European "single market", it was essential to implement a strong consumer protection policy and to grant the 500 million consumers of the EU market with solid rights.

Consumer protection is recognized in the Treaty on the Functioning of the European Union (TFUE). According to the article 169 TFUE, “[...] *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*”.

These policies have materialised in concrete terms by considering the market developments. Consumers are now protected against unfair commercial practices, unfair contract terms and must be provided with clear and comprehensible information before the conclusion of their contracts, etc.

However, although consumer rights are clear and straightforward, they are often difficult to enforce for consumers.

## 2. KEY CONSUMER RIGHTS AND OBLIGATIONS IN A NUTSHELL

### 2.1. Pre-contractual information requirements

Before being bound by a contract the consumer shall be informed of certain information to allow them to make an informed choice.

This precontractual information should be easily readable and understandable by an average consumer and should be provided in a clear, legible and comprehensible manner. The set of precontractual information that should be given to consumers is defined in the Directive 2011/83/EU, so called “[Consumer Rights Directive](#)”<sup>1</sup> and varies depending on the type of transaction made:

- Article 5 provides the list of pre-contractual information that should be provided for on-premises purchases.
- Article 6 lists the information requirements for distance and off-premise contracts (i.e. online purchases, the existence of the right of withdrawal).
- Article 7 sets formal requirements for off-premises contracts.
- Article 8 provides a list of formal requirements for distance contracts.
- Some contracts such as social services, social care, gambling, timeshare contracts are excluded from the pre-contractual information requirements. A full list of the exemptions is found in article 3(3) of the Consumer Rights Directive.
- For some contracts, pre-contractual information is required by sectoral legislation such as for a consumer credit contract<sup>2</sup>.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

<sup>2</sup> 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

- In addition, the Article 3(4) of the Consumer Rights Directive introduced the possibility for Member States to exempt low value transaction (less than €50) from the precontractual information requirements. This exemption is with regard to off-premises contracts only

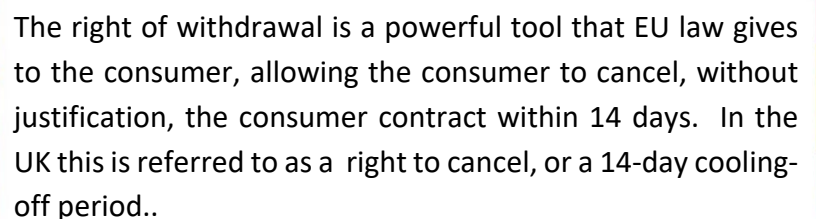
According to the Directive, Member States can go beyond the requirements and introduce additional information requirements. To see which Member States decided to go further, you can refer to the report on the application of the Consumer Rights Directive [Final report](#)<sup>3</sup> and [table](#)<sup>4</sup>. The directive allows member states to do this only for on-premises contracts. For distance and off-premises contracts the directive does not foresee this opportunity

If you want to check how all EU countries have transposed the Consumer Rights Directive you can consult the [Consumer Law database](#)<sup>5</sup>. In the United Kingdom, the Directive has been implemented by the [Consumer Contracts \(Information, Cancellation & Additional Charges\) Regulations 2013](#)<sup>6</sup>.

## 2.2. Right of withdrawal

The right of withdrawal is a powerful tool that EU law gives to the consumer. It allows the consumer to cancel, without justification, the consumer contract within 14 days after they received the good, or after the consumer concluded the contract for services or digital content.

- Under Article 9 of the EU Directive 2011/83/EU on consumer rights (the "Consumer Rights Directive" – CRD), consumers have a right of withdrawal from consumer contracts concluded at a distance and consumer contracts concluded outside your business premises.
- Article 11 of the Consumer Rights Directive provides information on how consumers can exercise their right of withdrawal.
- Article 12 deals with the effect of such right of withdrawal.
- Articles 13 and 14 set up, respectively, the obligations of the trader and of the consumers in the event of withdrawal.
- Article 15 deals with the effects of the exercise of the right of withdrawal on ancillary contracts.



The right of withdrawal is a powerful tool that EU law gives to the consumer, allowing the consumer to cancel, without justification, the consumer contract within 14 days. In the UK this is referred to as a right to cancel, or a 14-day cooling-off period..

<sup>3</sup> [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](http://ec.europa.eu/newsroom/document.cfm?doc_id=44637)

<sup>4</sup> [https://ec.europa.eu/info/sites/info/files/overview\\_regulatory\\_choices.pdf](https://ec.europa.eu/info/sites/info/files/overview_regulatory_choices.pdf)

<sup>5</sup> [https://e-justice.europa.eu/content\\_consumer\\_law\\_database-591-en.do](https://e-justice.europa.eu/content_consumer_law_database-591-en.do)

<sup>6</sup> <https://www.legislation.gov.uk/ukxi/2013/3134/contents/made>

- Finally, Article 10 of the Directive specifies the consequences for traders of an omission to provide consumers with pre-contractual information on the right of withdrawal (i.e. extension of the withdrawal period to 12 months from the end of the initial withdrawal period).

However, all distance/off premises contracts do not benefit from a right of withdrawal. There are 13 exemptions. For example:

- goods that have been personalized at consumer's request, or that have been made to their specification,
- service contracts, after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that they will lose their right of withdrawal once the contract has been fully performed by the trader,
- the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery,
- contracts concluded at a public auction, etc.

Full list of exemptions in the [Article 16](#) of the "Consumer Rights Directive".

In the UK, the consumer's right to cancel can be found in the [Consumer Contracts \(Information, Cancellation & Additional Charges\) Regulations 2013](#)<sup>7</sup>. You can also find technical guidance on the Regulations [here](#)

### 2.3. Consumer Rights and guarantees

The EU sales and guarantees Directive<sup>8</sup> is an important protection tool for EU consumers as it creates a legal warranty of conformity of two years. Criteria to determine if a product conforms or not are defined in Article 2(2) of the Directive.



However, the rules are not fully harmonized throughout the EU. The EU Consumer Sales and Guarantees Directive, being a so-called "minimum harmonization"<sup>9</sup> Directive, provides only a minimum level of consumer protection in the EU. Under Article 8a of the Directive, Member States were free to go beyond the requirements of the Directive. As a result, Member States have transposed the Directive differently.

The EC website provides a quick and complete [overview of the situation](#)<sup>10</sup> per Member State regarding the legal guarantee period. It also presents the [national implementation](#)<sup>11</sup> of each of the Member States.

<sup>7</sup> <https://www.legislation.gov.uk/ukxi/2013/3134/contents/made>

<sup>8</sup> 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

<sup>9</sup> A minimum harmonization Directive provides the common basis of minimum rights, while allowing Member States to provide for more favourable dispositions for consumers.

<sup>10</sup> [https://ec.europa.eu/info/article-8a-consumer-sales-and-guarantees-directive\\_en](https://ec.europa.eu/info/article-8a-consumer-sales-and-guarantees-directive_en)

<sup>11</sup> [https://europa.eu/youreurope/business/dealing-with-customers/consumer-contracts-guarantees/consumer-guarantees/index\\_en.htm](https://europa.eu/youreurope/business/dealing-with-customers/consumer-contracts-guarantees/consumer-guarantees/index_en.htm)

In a nutshell, the Directive established the following consumer rights:

- All new and second-hand goods are covered by a two-year legal guarantee of conformity as defined in Article 5.
- To bring the product into conformity, the consumer may, in accordance with Article 3, request repair or replacement and, if this is impossible or disproportionate, a reduction in price or rescission of the contract.
- Bringing the product into conformity shall be free for consumers as set up in Article 3.
- The Directive provides that if a defect appears during the first 6 months, the seller is automatically responsible. However, if the defect appears after the first 6 months, the seller can then ask you to prove that it is a manufacturing defect. Some Member States decided to extend the reversal period to the whole two years – see overview by Member States [here](#)<sup>12</sup>.
- Article 7 states that Member States have the possibility to introduce in their national legislation for so-called second-hand goods the possibility for traders and consumers to reduce by contractual agreement the duration of the legal guarantee. The latter can however in no way be less than one year.
- In the United Kingdom, the Directive has been implemented by the [Consumer Rights Act 2015](#)<sup>13</sup>. One significant difference is that UK consumers have a 30-day short-term right to reject goods that do not conform with the contract, and can request a full refund. The Act applies to new and secondhand goods without any differences. The Consumer Rights Act also sets out rights for consumers when buying digital content (due to be introduced in the EU in January 2022 (see box below)) and also when buying services (where there is no EU equivalent). Consumer's legal guarantees last for 6 years (5 years in Scotland) in the UK
- Full details of the Act will be given during your Consumer Pro training. You can find detailed guidance on the Consumer Rights Act [here](#)

## UPCOMING UPDATES

From 1 January 2022, the Consumer Sales and Guarantees Directive will be repealed and replaced by [Directive \(EU\) 2019/771](#) of 20 May 2019 on certain aspects concerning contracts for the sale of goods. The legal guarantee rights will also apply to Digital content and services with the brand-new [Digital Content Directive](#)<sup>14</sup>. Unless there is an agreement to do so, the UK Government will not be required to implement these new Directives following EU Exit.

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<sup>12</sup> [https://ec.europa.eu/info/article-8a-consumer-sales-and-guarantees-directive\\_en](https://ec.europa.eu/info/article-8a-consumer-sales-and-guarantees-directive_en)

<sup>13</sup> <https://www.legislation.gov.uk/ukpga/2015/15/contents>

<sup>14</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital service



## 2.4. Unfair Commercial Practices

A commercial practice is unfair, under EU law, when it prevents the consumer from taking a fully informed and free economic decision. Unfair commercial practices are prohibited across the EU.

As the Unfair Commercial Practices Directive ("UCPD") is a maximum harmonisation Directive (with the only exception of those applicable to financial services and real estate property, for which Member States may impose more stringent requirements), each Member State has the same standards of consumer protection against unfair commercial practices. In practice, this means that the rules must be the same across the EU.

- The Directive prohibits misleading commercial practices. The latter are composed of misleading actions (Article 6) and misleading omissions (Article 7)
- The Directive also prohibits so called aggressive commercial practices. Such aggressive practices are defined in Article 8 and Article 9 of the Unfair Commercial Practices Directive.
- There are 31 black-listed practices including both online and offline commercial conducts which may negatively impact a consumer's free and fully informed economic decision - Annex 1 of the UCPD. The first 23 black-listed practices concern misleading behaviour of the trader and the last 8 are prohibited aggressive practices. All these 31 practices are unfair in all circumstances.

In the UK, the Directive has been implemented by the [Consumer Protection from Unfair Trading Regulations 2008](#)<sup>15</sup>. Detailed guidance on the Regulations can be found [here](#).

### UPCOMING UPDATES

The Directive has been amended by the [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules, part of the 'New Deal for Consumers', or the so called "Omnibus Directive". Unless there is an agreement to do so, the UK Government will not be required to implement this new Directive following EU Exit.

## 2.5. Unfair Contract terms

The [Unfair Contract Terms Directive \("UCTD"\)](#)<sup>16</sup> protects consumers against unfair standard terms which create in contracts between a consumer and a trader a significant imbalance between the rights and obligations of the parties to the contract, to the detriment of consumers - (Article 3 UCTD).

- The annex of the Unfair Contract Terms Directive contains an indicative and non-exhaustive list of clauses that could be considered as unfair.
- Contract terms that are offered to consumers must always be drafted in a "*clear and comprehensible*" manner. In case of doubt as to the interpretation of the term, the interpretation most favourable to the consumer shall apply - (Article 5).

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<sup>15</sup> <https://www.legislation.gov.uk/uksi/2008/1277/contents>

<sup>16</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

- Contract terms which are considered unfair are not binding for consumers according to the conditions set up in national contract law. The contract will remain binding if it can continue without the unfair terms - (Article 6).

The UCTD allows member states to adopt or maintain stricter national provisions to ensure a higher level of consumer protection - Article 8. It could be the introduction of a so called “black-list” of unfair contract terms (i.e. in France) or the extension of the application to contracts that have been negotiated between the consumer and the trader.

To get a quick and complete overview the national transposition of each of the Member States click [here](#). Part 2 [Consumer Rights Act 2015](#) implements this Directive in the UK<sup>17</sup>. You can find a range of guidance on unfair contract terms [here](#)

## UPCOMING UPDATES

The Directive has been amended by the [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules, part of the ‘New Deal for Consumers’, or the so called “Omnibus Directive”. Unless there is an agreement to do so, the UK Government will not be required to implement this new Directive following EU Exit.

## 3. MAIN CHALLENGES CONCERNING GENERAL CONSUMER POLICY

### 3.1. Pre-contractual information

Pre-contractual information is one of the most recognized consumer rights. Currently, before being bound by a contract with a trader, the consumer has to be informed of certain information to allow them to make an informed choice, such as the main characteristics of the goods or services, the identity of the trader, the total price of the goods, etc.

These pre-contractual information requirements are defined in the Consumer Rights Directive<sup>18</sup>. However, numerous surveys, studies and judgments of national and European courts highlight that many professionals do not respect their obligations to provide pre-contractual information to consumers<sup>19</sup>.

<sup>17</sup> <https://www.legislation.gov.uk/ukpga/2015/15/contents>

<sup>18</sup> 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.

<sup>19</sup> In 2015, a [large-scale check](#) coordinated by the European Commission (“SWEEP”) highlighted that on 743 websites controlled, irregularities were confirmed in 436 cases (63%). [[https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/sweeps\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/sweeps_en)]

## EXPERT CORNER

The new Directive for the better enforcement and modernisation of Union consumer protection rules (the so-called “Omnibus” Directive)<sup>20</sup> brings additional pre-contractual information obligations for traders but also for online platforms. For instance, online traders will now be required to inform consumers in a clear and comprehensive manner about any personalised pricing that has been based upon automated-decision-making. Online platforms will also be obliged to provide the main parameters about the ranking of the results displayed to consumers and the sharing of responsibilities between the seller and the platform if something goes wrong.

We will have to wait and see whether the UK Government decides to adopt these improved consumer protection rules following EU Exit.

### 3.2. The right of withdrawal (Right to Cancel)

This right allows a consumer to test and inspect products bought at a distance. It also allows consumers to cancel a contract concluded online within 14 days of the reception of the goods (in the case of a product) or the conclusion of the contract (for services). It is the consumer right most widely known by EU citizens<sup>21</sup> and 95 % of EU shoppers consider it as important<sup>22</sup>.

This right was introduced by the Consumer Rights Directive<sup>23</sup> to counterbalance the situation of consumers who buy online, as the latter do not have the possibility to inspect the products as would be the case in a brick and mortar shop.

Similar protection has been provided for off-premises contracts because research shows that consumers are vulnerable to making wrong decisions when entering into contracts in their own homes. Some traders will use selling techniques that can exploit this vulnerability.

However, although this right is well-known and straightforward, in practice consumers face many obstacles to enforce it, such as:

- Some traders refuse to apply the Directive,
- Some traders refuse to reimburse consumers,
- Consumer sometimes receive only a partial refund, some traders pretexting that the consumer has misused the product, without providing any proof (i.e. photo),
- Some traders claim not to have received the product returned by the consumer. Some traders refuse to reimburse the consumer via the same means of payment used by the consumer but give vouchers instead.

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<sup>20</sup> DIRECTIVE (EU) 2019/2161 of the European Parliament and of the Council OF THE COUNCIL 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

<sup>21</sup> [https://ec.europa.eu/info/sites/info/files/consumer-conditions-scoreboard-2017-edition\\_en.pdf](https://ec.europa.eu/info/sites/info/files/consumer-conditions-scoreboard-2017-edition_en.pdf)

<sup>22</sup> Study on the application of the Consumer Rights Directive (2017), 160.

<sup>23</sup> Article 9 of the Consumer Rights Directive.

### 3.3. Consumer Rights and guarantees

If a consumer buys goods from a European trader, they are entitled to a legal guarantee of 2 years. This guarantee is provided by the Directive on certain aspects of the sale of consumer goods and the associated directive<sup>24</sup>. Only the seller is responsible for this guarantee.

This legal guarantee shall be distinguished from so-called “commercial guarantees”. The latter are additional guarantees, not mandatory by law, offered by the seller or the manufacturer and may be subject to a fee. These two types of guarantees lead to numerous disputes for European consumers:



- There is a great deal of confusion for consumers between the legal guarantee of conformity and the so-called commercial guarantees. In practice, very often, traders do not inform consumers about the legal guarantee of conformity even though it is an obligation, but only refer to their commercial guarantees (i.e. Apple case).
- Some traders refuse to apply the legal guarantee, which often obliges consumers to pay for expensive counter-expertise to enforce their rights.
- Some traders ask the consumer to pay for the repair under the legal guarantee which is forbidden by EU law.
- Some traders ask consumers to advance the return costs but do not reimburse the consumer afterwards.
- Currently, if the lack of conformity appears during the first 6 months, the seller is automatically responsible. They must apply the legal warranty of 2 years unless they prove that the consumer is at the origin of the defect. After the first 6 months, the burden of the proof changes and it is up to the consumer to prove that the good was defective at the purchase time, which is almost impossible.
- In case of termination of contract following the application of the legal guarantee, refunds are often made after a long period of time (or even not made at all by rogue traders) to consumers.
- In principle, the duration of the legal guarantee is 2 years for all goods, whether the goods are new or second hand. However, in several Member States, the legal guarantee for second- hand products may contractually be reduced to 1 year. Check your national law which implements the sale of consumer goods and associated guarantees directive.
- Consumer’s legal guarantees last for 6 years (5 years in Scotland) in the UK

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<sup>24</sup> 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

## UPCOMING UPDATES

From 1 January 2022, the Consumer Sales and Guarantees Directive will be repealed and replaced by the [Directive \(EU\) 2019/771](#)<sup>25</sup> of 20 May 2019 on certain aspects concerning contracts for the sale of goods. We will have to wait and see whether the UK Government decides to amend the Consumer Rights Act 2015 to take account of these two Directives.

### 3.4. Unfair Commercial Practices

A commercial practice is unfair where it is contrary to the requirements of professional diligence and distorts or is likely to substantially distort the economic behaviour of a reasonably well-informed and reasonably observant and circumspect consumer in relation to a good or service.

The Unfair Commercial Practices Directive<sup>26</sup> is fully harmonized and applies to all sectors (except financial sectors). It is a very good tool for practitioners to know and use. However, its implementation is far from uniform. For example:

- Consumers face unfair commercial practices in many areas and more and more in the digital area (social network, online platforms etc.).
- Misleading environmental claims. This is even more relevant now with the European Green Deal. Some new unfair commercial practices have been added to the Annex in the “Omnibus” Directive such as hidden advertisements, or fake consumer reviews.

### 3.5. Unfair Contract terms

The Unfair Contract Terms Directive (93/13/EEC) protects consumers against standard unfair contract terms imposed by traders. It applies to all contracts for the purchase of goods and services, whether they are online or offline purchases of consumer goods. The following is a non-exhaustive list of recurrent unfair clauses found in consumers contracts:

- Consumers face contract terms which inappropriately exclude or limit consumers' rights to compensation if the trader fails to fulfil their part of the contract.
- Some traders include clauses in their contracts which allow them to terminate a contract unilaterally without granting the same right to the consumer.
- Some traders reserve the right to unilaterally amend contracts without having a valid reason to do so and without giving notice to the consumer.

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<sup>25</sup> [https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-sales-and-guarantees-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-sales-and-guarantees-directive_en)

<sup>26</sup> 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 ('Unfair Commercial Practices Directive')

- Some traders insert clauses in their contracts to limit consumers' rights to take legal action.
- The Covid pandemic has shown that too many traders have been using unfair terms to withhold consumer refunds following Government restrictions on travel etc.

## 4. LAWS AND REGULATIONS AT EU AND NATIONAL LEVEL

### 4.1. The Unfair Contract Terms Directive (“UCTD”)

- [Council Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.
- [Guidance on the interpretation and application of Council Directive 93/13/EEC](#) on unfair terms in consumer contracts.
- Part 2 [Consumer Rights Act 2015](#)
- [Guidance on unfair contract terms](#)

*Complementary documentation:*

- Practical information about the Unfair Contract Terms Directive available [here](#).

### 4.2 The Unfair Commercial Practices Directive (“UCPD”)

- [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 (‘Unfair Commercial Practices Directive’).
- [Interpretative guidelines](#) of the Unfair Commercial Practices Directive<sup>27</sup>.
- [Consumer Protection from Unfair Trading Regulations 2008](#)
- [Guidance on the Consumer Protection from Unfair Trading Regulations](#)

*Complementary documentation:*

- [European Commission report](#) on the application of the Directive.
- [European Commission communication](#) on the application of the Directive.

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<sup>27</sup> Commission staff working document on the implementation application of the Directive 2005/29/EC on Unfair Commercial Practices accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the committee of regions a comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses - SWD/2016/0163 final

### 4.3 The Consumer Rights Directive (“CRD”)

- [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 Text with EEA relevance
- [EU Guidance document](#) on the Consumer Rights Directive
- [Consumer Contracts \(Information, Cancellation & Additional Charges\) Regulations 2013<sup>28</sup>](#)
- [Guidance on the Consumer Contracts \(Information, cancellation & Additional Charges\) Regulations 2013](#)

*Complementary documentation:*

- Templates for Digital products [here](#).
- Factsheets on the key facts on the Consumer Rights Directive [here \(in EN\)](#).

### 4.4. The sale of consumer goods and associated guarantees 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
- [Consumer Rights Act 2015](#)
- [Guidance on the Consumer Rights Act 2015](#)

*Complementary documentation:*

- Legal guarantees and commercial warranties on consumer goods in the EU, Iceland and Norway “Are they Worth the Money?” – [Report of the ECC-NET \(updated in April 2019\)](#).
- [Guarantee and returns – Practical information](#).

### 4.5. Legal references of the new Directives: “Omnibus”, “Digital Content” and “Sale of Goods Directives”

*The new “Omnibus” Directive:*

[Directive \(EU\) 2019/2161](#) of the European Parliament and of the Council 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.

*The new Digital Content Directive (“DCD”).*

[Directive \(EU\) 2019/770](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services

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<sup>28</sup> <https://www.legislation.gov.uk/uksi/2013/3134/contents/made>

*The new sale of goods Directive (“SoG”).*

[Directive \(EU\) 2019/771](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC

## 5. RELEVANT CASE LAW

### 5.1. Unfair Commercial Practices Data base

[Annex 1 of the Guidance on the implementation/application of the DIRECTIVE 2005/29/EC](#) on Unfair Commercial Practices (2016) provides a list of all relevant EU case law relating to the Unfair Commercial practices.

### 5.2. Unfair Contract Terms Directive data base

[Annex 1 of the interpretative guidance on the implementation of the Directive](#) provides a list of all relevant EU case law relating to the Unfair Contract Terms.

### 5.3. Documentation of the European Court of Justice on Consumer law cases

In 2018, the European Court of Justice published [a brochure](#) (in EN) recalling the main cases held in the Consumer Law area (UCTD, UCPD etc.).

## 6. WHAT CAN CONSUMERS DO IF THEY HAVE A PROBLEM?

### 6.1. National consumer associations

Consumer associations have an extremely important role to play in the event of disputes between consumers and professionals. By clicking [here](#), you can find a list of national consumer bodies by country.

### 6.2. European Consumer Centres (ECC-NET)

The ECC-NET is a network of consumer centres. They are competent to deal with cross-border issues between a consumer and a trader. There is one European Consumer Center (ECC) in each EU Member States, plus Norway and Iceland. The list of all the ECCs is available [here](#). Following EU Exit, the UK ECC has been renamed as the [UK International Consumer Centre](#) and, although no longer part of the ECC network, will maintain links with its EU colleagues.





### 6.3. Small claim procedures in courts and the European Small Claim Procedure (“ESCP”)

In many countries, consumers can use small claims procedures when they have disputes with the traders. Those procedures are usually cheaper and quicker than usual court procedures. But to be able to use small claims procedures? there is usually an upper limit of the value of the claim.

The limits for small claims in the UK are as follows:

- England & Wales - £10,000
- Scotland (simple procedure) - £5,000
- Northern Ireland - £3,000

If the trader is abroad, the consumer could use the European Small Claim Procedure. The European Small Claim Procedure is a simplified judicial procedure based on a standardized form available in all [28 EU Languages](#). Its objective is to simplify and speed up cross-border claims of up to €5000. The procedure is available in all EU Member States except Denmark. UK consumers are not able to access the European Small Claim Procedure following EU Exit.

- **Legal References:**
  - [Regulation \(EC\) No 861/2007](#) of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.
  - [Regulation \(EU\) No 1215/2012](#) of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) – so called “Brussels I”.
- **How to find the competent tribunal and the national costs of the procedure?**
  - Tool to determine the relevant tribunal available [here](#)
  - Tool to determine the national costs of the procedure available [here](#).
- **Complementary documentation** on ESCP (Practice guide for the application of the ESCP, Infographic for consumers, Leaflet for legal professionals etc.) available [here](#).

### 6.4. Public authorities

In some instances, consumers can submit complaints to the national public authorities, such as Market authorities or the regulators of specific sectors. However, not all authorities accept complaints from individual consumers. The authorities also do not deal with redress issues: e.g. the authority might sanction the company for unfair practice but would not say whether the consumer is entitled to a compensation.

When the infringement of consumer rights is spread in many EU countries, the authorities of those countries cooperate and help each other to investigate through the special network, called Consumer Protection Cooperation network. Following EU Exit, and unless an agreement is made to the contrary, the UK are no longer a member of the Consumer Protection Cooperation Network.

- **Legal reference:**

[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 (Text with EEA relevance).

## 6.5. Alternative Dispute Resolution bodies (ADR) and Online Dispute Resolution platform (ODR)

Alternative dispute resolution can be an efficient way for individual consumers to resolve their disputes with traders and to obtain redress. There are ADR bodies in all EU countries, and they are created specifically to make it easier and cheaper for consumers to fix their problems.

### Alternative Dispute Resolution bodies (ADR)

*Definition:* **Alternative Dispute Resolution (ADR)** is an out-of-court process for solving disputes between a consumer and a trader, with the assistance of an ADR body.

- **Legal reference:**

[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. You will find the current list of available ADR bodies [here](#) (classified by country).

You will find a list of available UK ADR bodies [here](#)

### Online Dispute Resolution platform (ODR)

*Definition:* The Online Dispute Resolution Platform is an EU official website managed by the European Commission. Its objective is to help consumers and traders to find an out-of-court settlement to their litigations. The ODR platform is designed to facilitate communication between consumers, traders and ADR bodies. UK consumers are unable to access the ODR platform following EU Exit.

- **Legal reference:**

[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. The full list of ODR contact points is available [here](#).

## 6.6. Ordinary court procedures

Consumers can always use national court procedures, as access to justice is a fundamental right. However, in practice, very low number of consumers would go to courts, as this is usually very lengthy and expensive.

## 7. OTHER INTERESTING TOOLS: EU CASE LAW DATABASES

Below you will find various tools to help you find quickly relevant cases.

- **The database of the European Court of Justice (Curia)** available in all EU languages - [here](#).
- **The Eur-Lex database** : the European Union's legal database: EU case law in all EU official languages, including case law from the period before 17/06/1997 - [here](#)
- **The JURIFAST database** : the latter is run by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA Europe), which contains preliminary rulings by the European Court of Justice, and the relevant preliminary questions by the Member States' courts (this database works in English and French) – available [here](#).
- **The JURE case-law database**: the database was created by the European Commission, contains case law on jurisdiction in civil and commercial matters and on the recognition and enforcement of judgments in a State other than the one where the judgment was passed. This includes case law on relevant international conventions (i.e. 1968 Brussels Convention, 1988 Lugano Convention as well as EU and Member State case law) – available [here](#).



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