

Consumer protection online

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CONSUMER PROTECTION IN THE EU

Providing more and better
information on the
sustainability of products

Establishing a right to repair for
consumers

The European Parliament
wants to improve
consumer protection in
the EU by:

Improving product safety,
especially for products sold
online

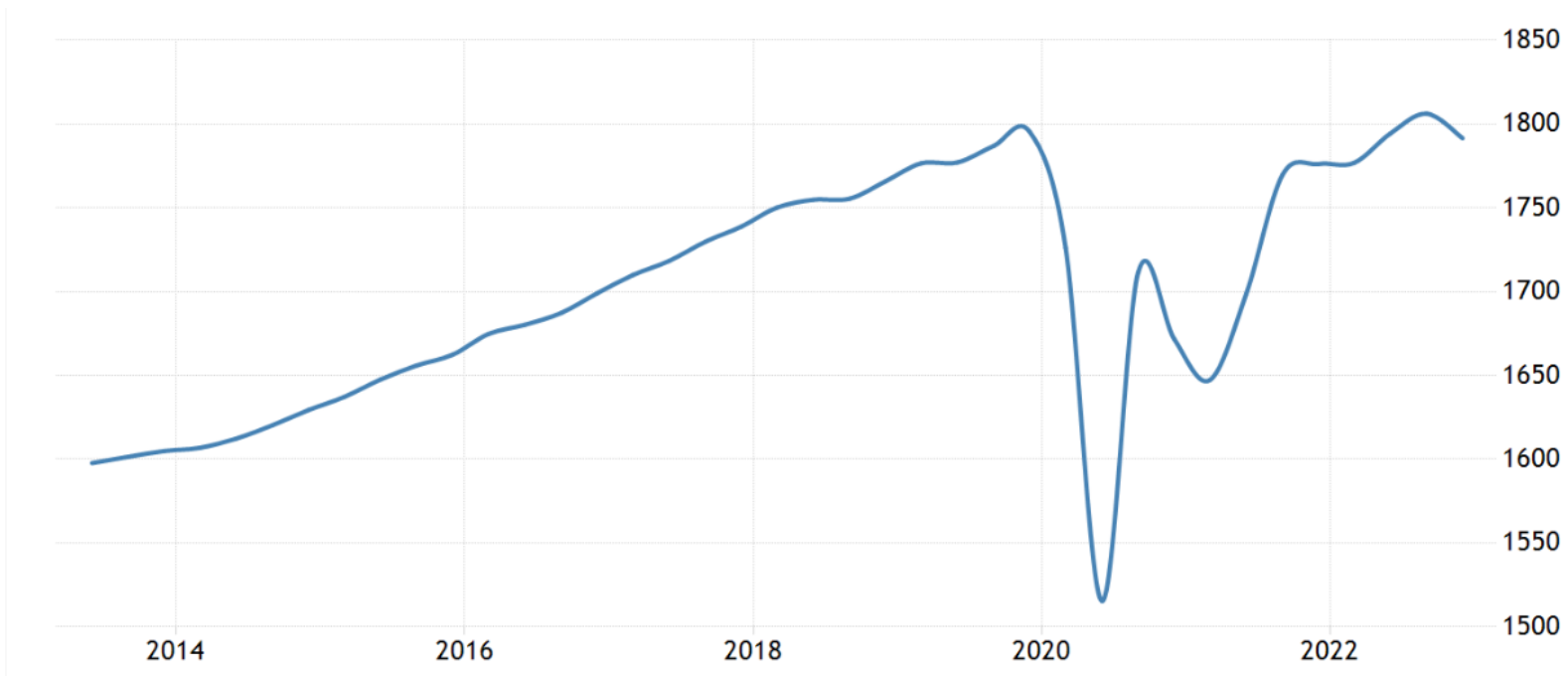
Making sure green claims in
advertisements are backed up
with evidence (claims such as
CO2-neutral)

Source: European Parliament



©EU / EP

Statistics...

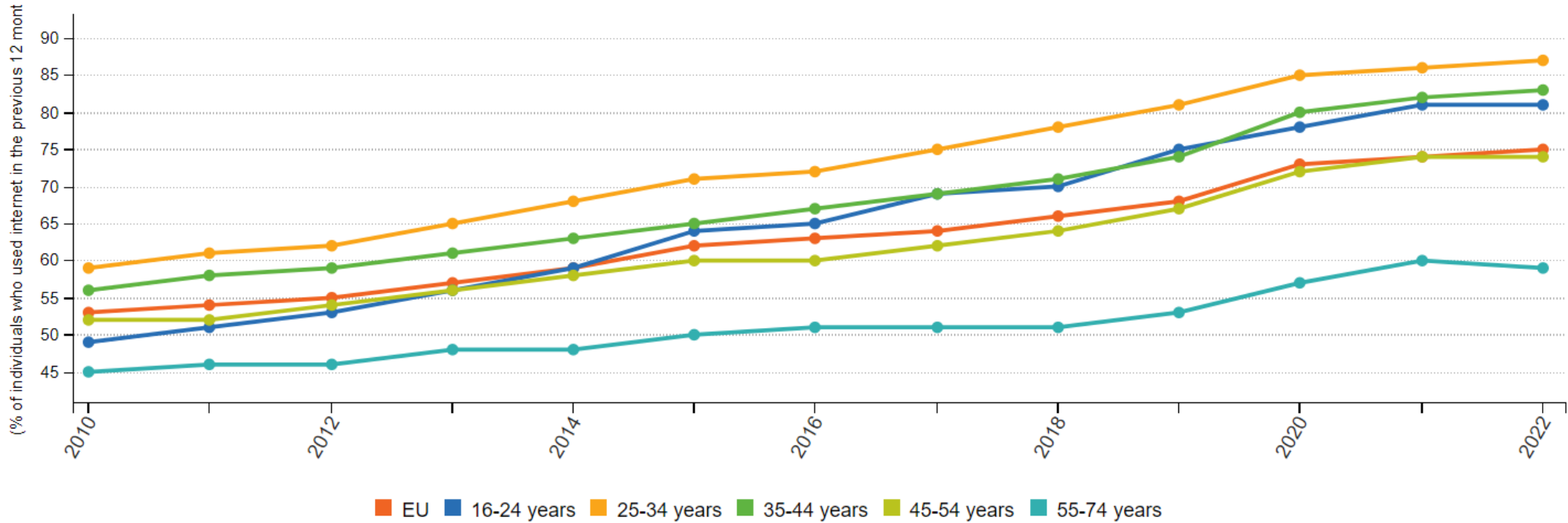


European Union Consumer Spending

— (<https://tradingeconomics.com/european-union/consumer-spending>)

Statistics...

Internet users who bought or ordered goods or services for private use in the previous 12 months by age group, EU, 2010-2022



(https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals)

**Do consumers buy
online?**

...

**Not as well as they
could?**

...

Why?



Structure

1. Consumer protection in general
2. Online aspects of consumer protection
3. Specific areas of consumer protection (e.g. digital goods, sharing economy etc.)

Consumer protection - history

- Market Protection - USA 1960s
- Europe: the early 1970s
- the concept of the consumer
- consumer contract

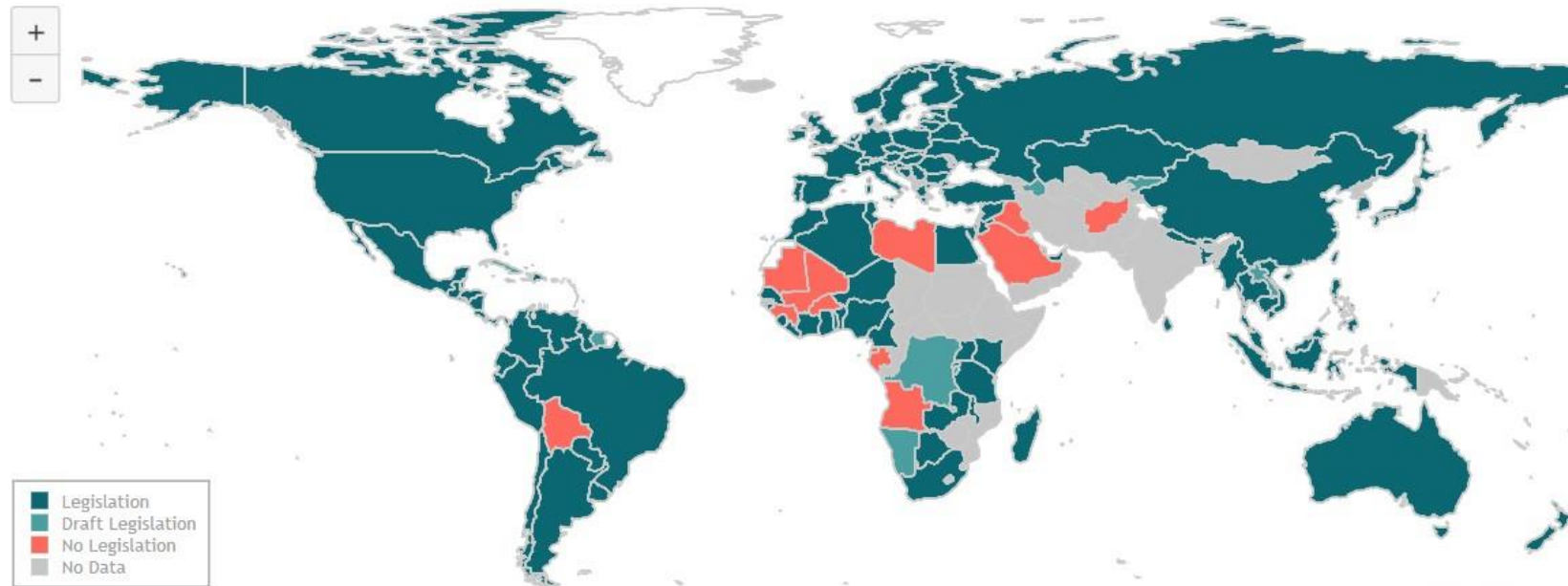
Consumer protection components

1. **safety and health** protection
2. protection of **economic interests**
3. information - **right to information**
4. the right to organise to **protect one's interests**
(class action, consumer organisations)

In more detail

- consumer health
- the position of the consumer in the legal relationship (abuse of the position of the stronger party)
- quality, price of goods and services provided
- distribution practices (offer, form of sale, advertising)
- clear information
- financial flows (credit, leasing)
- non-standard situations on the provider's side (insolvency, bankruptcy)

Global protection



- Online Consumer Protection Legislation Worldwide:
https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Consumer-Protection-Laws.aspx

Consumer protection in the EU

1. Primary law (Treaty on the Functioning of the European Union)
2. Secondary law (regulations, directives)

Article 12 TFEU

- *Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.*

Article 169 TFEU

Consumer protection

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.

Charter of Fundamental Rights of The European Union

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

European legislation - Secondary law

- Important (but older) legislation:
 - COUNCIL DIRECTIVE 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
 - 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
 - Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') – **regulation of online environment, responsibilities, not focused on consumer (responsibility of online platforms - ISP)**
 - Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 **concerning misleading and comparative advertising**

European legislation - Secondary law

- 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
- Very important! (contains many of the requirements for contracting - even electronic contracting) – this will be main source for as described in contracting.
- Information obligation, termination, quality of goods etc.

European legislation overview

Online shopping

- http://europa.eu/youreurope/citizens/consumers/shopping/index_en.htm

Electronic contracting

Quick overview

- Important part of the consumer protection legislation concerning:
 - contracting phases
 - consumer information
 - consumer rights
 - possibilities to return goods / services
 - etc.

Contract

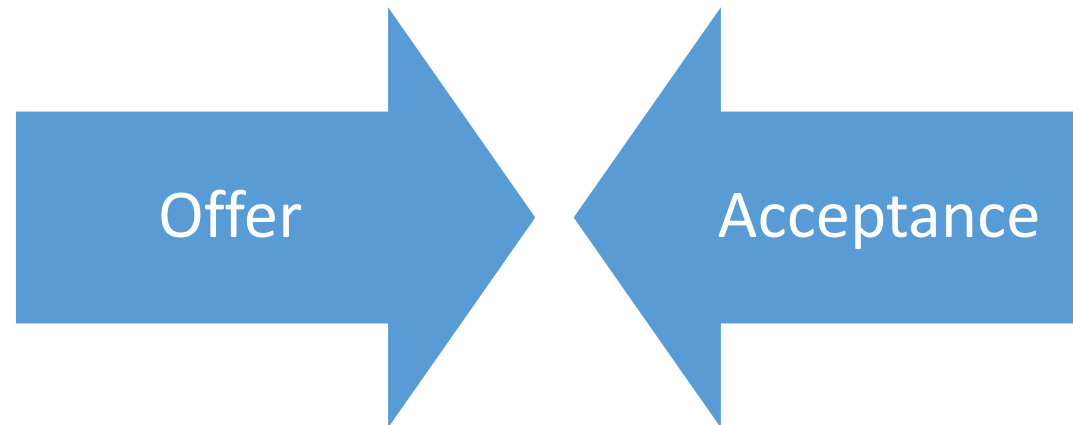
- It's not a "piece" of paper/pdf/...
 - The agreement of two (or more) parties
 - A medium is just proof that there is a contract
- The moment the contract is made
 - The creation of a legal obligation to comply with it
 - Breach of contract is a breach of law

Electronic contract - specifics

- **Distant** - the parties are usually not present in the same place
- **Different method of identification**
- **Different level of conclusiveness**
- **Essentials of form** - written form?

Contract

The contract is concluded once the parties have agreed on its content (acceptance):



Two unilateral expressions of will in mutual agreement (possibly with minor deviations)

Instruments of private law regulation

Substantive law:

- 1. **mandatory provisions of civil law** - limitations on freedom of contract
- 2. nullity of the contract, **withdrawal from the contract**
- 3. **liability** - compensation for damages
- 4. **burden of proof**

Instruments of private law regulation

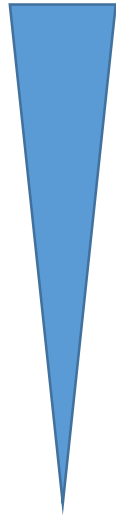
Procedural law:

1. **Applicable law, jurisdiction** (in cross-border conflicts for consumers)
 - Brussels Ibis Regulation, Brussels IIbis Regulation
 - Rome I Regulation, Rome II Regulation
 - Many decision of CJEU
2. active legitimation of **consumer organisations**

Instruments of public law regulation

1. **fin**es - no direct benefit to consumers
2. **licences** - limited possibility of sale
3. **administrative sanctions** - confiscation of goods (counterfeits)
4. **criminal sanctions** - serious damage to the consumer

Phases of contractual protection of consumer



1. Pre-contractual
2. Contractual
3. After the conclusion of the contract

1. Pre-contractual

- **information (consumer decision-making)**
- health
- advertising regulation

Pre-contractual instruments:

- influencing consumers' economic decision-making
 - with whom the contract is concluded
 - what (subject matter)

Legal regulation of contractual freedom

- economic predominance of sellers - entrepreneurs (necessity to protect the weaker party)

2. Contractual + 3. After the conclusion

Defects - unequal conditions

- contradiction with good faith
- a substantial and unjustifiable disproportion between the rights and obligations of the parties
- contra preferentem principle (= interpretation of ambiguities in favour of the consumer)
- the legislation is deliberately vague
- written contractual terms must be clearly and intelligibly worded without capricious formulations
 - sea view (disputable, how big, how far,...)
- sanctions: non-binding of the provision on the consumer, fine, publication of the judgment in the press
- Adhesive contrats – important for online environment

Information duty

- **General**

1. practical information (relating to the person of the entrepreneur or the subject of the contract)
2. legal information (possibility of withdrawing from the contract, rights arising from defects in the goods)

- **Distant contracts**

1. payment information
2. information on the binding nature of the contract (e.g. minimum period for which the consumer is bound by the contract)
3. information on withdrawal (withdrawal options, withdrawal conditions, how the consumer should proceed)
4. out-of-court dispute resolution, including an indication of the body to which recourse can be made

Information duty

- **Electronic contracts**

When using electronic means, the entrepreneur shall also provide data

- a) whether the concluded contract will be stored with him and whether he will give the consumer access to it,
- b) the languages in which the contract may be concluded,
- c) the various technical steps leading to the conclusion of the contract,
- d) the possibilities of detecting and correcting data entry errors before the order is placed; and
- e) the codes of conduct to which the trader is bound or which he voluntarily adheres and their accessibility by electronic means.

3. After concluding the contract

- warranty period, claims
- rights under liability for defects (replacement of goods, cancellation of contract)
- It is a prerequisite that the consumer tries the goods, as this possibility is limited in distance contracts
- Option to withdraw from the contract without giving reasons within 14 days of receipt of the goods
- The legislation also applies to services
- The consumer is liable for any diminution in the value of the goods if he has used them in a way that is not appropriate in view of their nature and in order to familiarise himself with the nature, characteristics and functionality of the goods (Article 14(2) of the Consumer Rights Directive)

Terms and Conditions as the core

Connecting the terms and conditions:

a) Attached to the email as an attachment

- Easy to read content

b) Display as one of the steps in a web browser or "frame,,

- fairly standard

Terms and Conditions as the core

c) Display in a "pop-up" window

- problematic - window may not be displayed

d) Hyperlink

- Need to ensure functionality
- The consumer protection problem - the provision of information by means of a hyperlink does not satisfy the requirement of permanence, as the trader can change it at will without the consumer's knowledge (judgment of the Court of Justice of the European Union of 5 July 2012 in Case C-49/11 Content Services Ltd v Bundesarbeitskammer).

Conclusion of adhesion contracts electronically

- I. By email (by sending general terms and conditions that the offeror has indicated it will not negotiate)
- II. Form contracts (for which there is a rebuttable presumption of adhesion)

II) Form contracts concluded electronically

a) **Click - wrap**

- Just click on the "I agree" button e.g. when using the software (this will not be a written contract)

b) **Click - through**

- Multi-step form - typical for e-shops

c) **Browse - wrap**

- Access to the site (difficult to prove that the user knew about the terms and conditions)

Case law on consumer contracting

- The Austrian and German courts, for example, have commented on the issue of surprise in commercial terms on several occasions.
- Consumers do not normally read commercial terms and conditions and thus cannot be bound by certain parts of them (if they contain surprising provisions).
- The Austrian Supreme Court, which stated that even if the terms and conditions appear to have been read (for example, by clicking the relevant button), it is necessary for the validity of the provisions in question that the person concerned is willing to actually submit to the legal consequences; if this is not the case, such a declaration cannot be considered effective.

Case law on consumer contracting

- The Regional Court of Berlin addressed the surprisingness of a provision in the terms and conditions of the social network Facebook in connection with the "Friend finder" function.
- The terms and conditions included a provision on the further use of the user's photos and videos.
- However, it was no longer specified for what purpose Facebook could use the content in question and what the content actually was.
- The terms and conditions themselves were very general, unclear and complex.
- This is a surprising arrangement for the consumer, and consent (clicking on the 'I agree' button) does not mean that the consumer is bound by such surprising arrangements, and therefore that the consumer has consented to the processing of personal data in this case.

Case law on consumer contracting

Controversial Austrian decision

- The Austrian Supreme Court awarded compensation for diminished value to a businessman on the grounds that the diminished value was such that the item could no longer be sold as new, but only used.
- However, the goods had not been damaged and had only been used by the consumer for testing purposes. In this case, the monitor was used for approximately 43 hours (according to the built-in counter) after the return period.
- However, this decision was soon overturned as it fundamentally disadvantaged the consumer. The purpose of withdrawing from a distance contract is precisely to be able to test the goods and, if they are not damaged
- Judgment of the Austrian Supreme Court of 27 September 2005, Case No 1 Ob 110/05s.

Case law on consumer contracting

Judgment of the European Court of Justice of 3 September 2009
in Case C-489/07 Pia Messner v Firma Stefan Krüger

- it is contrary to the Consumer Protection Directive where national legislation provides, in general, that a trader may claim compensation from a consumer if he has tried the goods and withdrawn from the contract within a given period. However, that cannot apply to situations where the consumer has used the goods in a manner incompatible with the principles of civil law (principle of good faith or unjust enrichment).

Generally forbidden

- the **binding nature of the agreement on the consumer**, while the **seller or provider can change** the performance of the services (misuse of the stronger position);
- requiring a consumer who fails to fulfil his obligation to pay **disproportionate compensation**;
- allowing the **seller or provider to cancel (modify) the contract at will**, if the same right is not reserved to the consumer;
- the possibility for the **seller or provider to unilaterally change**, without good reason, any of the characteristics of the product to be supplied or the service to be provided;

Generally forbidden

- the possibility for the price of the goods to be fixed at the time of delivery or for the **seller or provider to increase the price**, without in either case giving the consumer a corresponding right to cancel the contract if the final price is too high in relation to the price agreed at the time of conclusion of the contract;
- **reserving to the seller the right to determine whether the goods or services supplied are in conformity** with the contract or reserving to the seller the exclusive right to interpret any term of the contract;
- obliging the **consumer to fulfil all his obligations even if the seller or provider fails to fulfil his obligations.**

Specifics, prohibitions

- **Distribution practices** (door-to-door sales, off-sales,...)
- **Misleading advertising** (false characteristics of goods)
- **Comparative advertising** (can be compared under the same conditions)
- **Unfair commercial practices** (unprofessional, distorting trade)
- **Deceptive trade practices** (misleading the consumer even if the information is true - e.g. not complete)
- **Aggressive business practice** (coercion, having to sign, encouraging children)
- **Contrary to good morals** (sexual themes, toddlers)
- **General prohibition of discrimination**

Current legislation

1. 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
2. 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**
3. Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 **on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market** and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC
4. Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 **on cross-border portability of online content services in the internal market**
5. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (**General Data Protection Regulation**)
6. **Class actions?**

1. Directive on Online sales

- Upgrading the idea of Consumer Rights Directive
- The main target of the proposal is to harmonize the area of distant sales of tangible things (not real estates)
- It does not apply to goods like DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content (->Digital Content Directive)
- It does not apply to distant contracts for provision of services (->Digital Content Directive)
- it applies to goods like household appliances or toys where the digital content is embedded in such a way that its functions are subordinate to the main functionalities of the goods and it operates as an integral part of the goods.

1. Directive on Online sales

It contains:

- full harmonisation of the conformity criteria for the goods
- hierarchy of the remedies, available to consumers
- periods for the reversal of burden of proof and the legal guarantees (for 2 years it has to be proven by the seller not the consumer)
- the consumer's right to terminate the contract even in case where the non-performance is minor (not available in past)

1. Directive on Online sales

Problems?

- Different scheme for online selling and „classical“ selling = different rules for responsibility, possibly different guarantees!
- Disagreement with 2 years period guarantee in some MS

2. Digital Content Directive

- Providing digital content is more and more usual but so far (as you could see) not recognized by EU consumer law
- This should be the core directive reflecting digital goods irrespective the form (whether provided on tangible medium or by downloading)
- Reaction to outdated mechanisms in Consumer Rights Directive (2011/83/EU)

2. Digital Content Directive

- The main aim is to harmonise the contracts and providing digital content to the consumer (different approach of different MS)
 - E.g. in Netherlands, there was specific legislation, in other MS it was completely missing
- Specification of digital content which is not in conformity with the contract
- What are the possibilities of modification of the digital content
- Remedy for the failure to supply

2. Digital sales Directive

– Art. 2:

- (1) '**digital content**' means data which are produced and supplied in digital form;
- (2) '**digital service**' means: (a) a service that allows the consumer to create, process, store or access data in digital form; (b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service

– For example in Czech implementation, there is nothing as a definition of **digital service**

– Problematic, what is difference between **information society service** and **digital service** (however different scopes of legal regulation)..... any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services

2. Digital Content Directive

- Strong emphasis on the quality of services!
- Art. 7 and 8 – Subjective and Objective requirements for conformity

Article 7

Subjective requirements for conformity

In order to conform with the contract, the digital content or digital service shall, in particular, where applicable:

- be of the description, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the contract;
- be fit for any particular purpose for which the consumer requires it and which the consumer made known to the trader at the latest at the time of the conclusion of the contract, and in respect of which the trader has given acceptance;
- be supplied with all accessories, instructions, including on installation, and customer assistance as required by the contract; and
- be updated as stipulated by the contract.

Article 8

Objective requirements for conformity

1. In addition to complying with any subjective requirement for conformity, the digital content or digital service shall:

- be fit for the purposes for which digital content or digital services of the same type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
- be of the quantity and possess the qualities and performance features, including in relation to functionality, compatibility, accessibility, continuity and security, normal for digital content or digital services of the same type and which the consumer may reasonably expect, given the nature of the digital content or digital service and taking into account any public statement made by or on behalf of the trader, or other persons in previous links of the chain of transactions, particularly in advertising or on

2. Digital Content Directive

- **digital content should be without defect?** (problematic concept) - SW always has some imperfections and defects and the primary question is what purpose it should serve (the authors of the directive also tried to define the border, in the end it failed - *hence the subjective and objective aspect*)
- If digital content or service is not in conformity – reduction of payment / cancellation / money chargeback etc. (however the lack of conformity cannot be only pretext for consumer)

2. Digital Content Directive

Article 13

Remedy for the failure to supply

1. Where the trader has failed to supply the digital content or digital service in accordance with Article 5, the consumer shall call upon the trader to supply the digital content or digital service. If the trader then fails to supply the digital content or digital service without undue delay, or within an additional period of time, as expressly agreed to by the parties, the consumer shall be entitled to terminate the contract.
2. Paragraph 1 shall not apply, and the consumer shall be entitled to terminate the contract immediately, where:
 - (a) the trader has declared, or it is equally clear from the circumstances, that the trader will not supply the digital content or digital service;
 - (b) the consumer and the trader have agreed, or it is clear from the circumstances attending the conclusion of the contract, that a specific time for the supply is essential for the consumer and the trader fails to supply the digital content or digital service by or at that time.
3. Where the consumer terminates the contract under paragraph 1 or 2 of this Article, Articles 15 to 18 shall apply accordingly.

Article 14

Remedies for lack of conformity

1. In the case of a lack of conformity, the consumer shall be entitled to have the digital content or digital service brought into conformity, to receive a proportionate reduction in the price, or to terminate the contract, under the conditions set out in this Article.
2. The consumer shall be entitled to have the digital content or digital service brought into conformity, unless this would be impossible or would impose costs on the trader that would be disproportionate, taking into account all the circumstances of the case including:
 - (a) the value the digital content or digital service would have if there were no lack of conformity; and

Article 5

Supply of the digital content or digital service

1. The trader shall supply the digital content or digital service to the consumer. Unless the parties have agreed otherwise, the trader shall supply the digital content or digital service without undue delay after the conclusion of the contract.
2. The trader shall have complied with the obligation to supply when:
 - (a) the digital content or any means suitable for accessing or downloading the digital content is made available or accessible to the consumer, or to a physical or virtual facility chosen by the consumer for that purpose;
 - (b) the digital service is made accessible to the consumer or to a physical or virtual facility chosen by the consumer for that purpose.

2. Digital Content Directive

Termination (Article 16)

- In the event of termination of the contract, the trader shall reimburse the consumer for all sums paid under the contract.
- However, in cases where the contract provides for the supply of the digital content or digital service in exchange for a payment of a price and over a period of time, and the digital content or digital service had been in conformity for a period of time prior to the termination of the contract, the trader shall reimburse the consumer only for the proportionate part of the price paid corresponding to the period of time during which the digital content or digital service was not in conformity, and any part of the price paid by the consumer in advance for any period of the contract that would have remained had the contract not been terminated.

2. Digital Content Directive

- the supplier shall provide the consumer with technical means to retrieve all content provided by the consumer and any other data produced or generated through the consumer's use of the digital content to the extent that data has been retained by the supplier (Article 16(4))
- the consumer shall refrain from using the digital content

2. Digital Content Directive

Problems?

- Full harmonisation (strict) – states however should have the ability to adopt higher standards (in this case it is „not“ allowed)
- Retrieval of all content provided by the consumer after termination:

4. Except in the situations referred to in point (a), (b) or (c) of paragraph 3, the trader shall, at the request of the consumer, make available to the consumer any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader.

The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.

X 5. The trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to paragraph 4.

2. Digital Content Directive

Problems?

- This Directive shall not apply to contracts regarding: (b) electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972, with the exception of number-independent interpersonal communications services as defined in point (7) of Article 2 of that Directive
- Personal data as a „payment“ (Article 3(1))
- Modification – notice on durable medium only when it has negative effect – should not it be any modification? (e.g. change of design as gMail?)
- *In preparatory version - recital 17: „Digital content is highly relevant in the context of the Internet of Things. However it is opportune to address specific issues of liability related to the Internet of Things, including the liability for data and machine-to-machine contracts, in a separate way.“ WHY??*

Digital services / quality

Sony is pulling Cyberpunk 2077 from the PlayStation Store and offering full refunds

You can request a refund now

By Jay Peters | @jaypeters | Dec 17, 2020, 8:13pm EST

f   SHARE



Cyberpunk story continues



- *„As players were dissatisfied with the quality of Cyberpunk, company shareholders felt similarly bewildered by the release—resulting in the current class action. The plaintiff alleges, on behalf of the class, that the company and the individual defendants violated §10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934. The defendants allegedly did this by employing devices, schemes, and artifices to defraud investors. Further, the complaint asserts they made untrue statements of material facts or omitting material facts that defrauded the purchasers of company stock.“*

[Whole plot here](#)

.. and it is not only Cyberpunk

- GTA Trilogy Remastered:
<https://www.denofgeek.com/games/gta-trilogy-definitive-edition-problems-bugs-glitches-reactions/>
- Battlefield 2042: <https://www.washingtonpost.com/video-games/2022/02/18/battlefield-2042-fixes-bugs-petition/>
- Last of Us Part I PC

And many more...

3. Geoblocking

– Article 101 TFEU

Article 101

(ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,

- any decision or category of decisions by associations of undertakings,

- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

3. Geoblocking

- It covers all goods and services and the main target is *„to contribute to the proper functioning of the internal market by preventing unjustified geo-blocking and other forms of discrimination based, directly or indirectly, on the customers' nationality, place of residence or place of establishment“*
- Online and offline
- Different approach can be explained (worse conditions, different general conditions of access, different net sale prices)

3. Geoblocking

- prohibits discrimination against consumers and, in limited cases, against businesses, based on their nationality, place of residence or establishment when they buy goods or services.
- The Regulation is relevant for online traders selling goods in any EU Member State as they will no longer be able to refuse a sale based on the customer's nationality or location. Although the Regulation does not oblige traders to deliver goods or services in other countries, it requires that customers from other EU countries are able to buy goods under the same terms as local customers and prohibits requirements like a local place of residence, local bank account or payment methods, and online redirection or IP address blocking.

3. Geoblocking

- **Explanatory memorandum (history):** The goods and services most affected by geo-blocking are clothing, footwear and accessories, physical media (books), computer hardware and electronics, airplane tickets, car rental, digital content such as streaming services, computer games and software, e-books and MP3s.
- **The Regulation (reality):** *„Audiovisual services, including services the principle purpose of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. (Recital 8)“*

3. Geoblocking

– 20 January 2021

Videogame publisher	Reduction for cooperation	Fine (€)
Bandai Namco	10 %	340 000 EUR
Capcom	15 %	396 000 EUR
Focus Home	10 %	2 888 000 EUR
Koch Media	10 %	977 000 EUR
ZeniMax	10 %	1 664 000 EUR



- https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40413
- https://ec.europa.eu/commission/presscorner/detail/en/IP_21_170

3. Geoblocking

... and what about this?

The screenshot shows the Google Play Store interface for the game 'Tomb Raider Reloaded' by Square Enix Ltd. The page displays the game's icon, title, developer name, and a warning that the game is not available in the user's region. A video player shows a scene from the game with a play button in the center. Below the video, there is a description of the game and a genre tag 'Akční'.

13:16 61%

Google Play

Tomb Raider Reloaded
SQUARE ENIX LTD
Obsahuje reklamy ·
Nákupy v aplikaci

100 tis.+ Stažení

12 PEGI 12

⚠ Tato položka není ve vaší zemi dostupná.

TOMB RAIDER RELOADED

O této hře →

Vyčistěte hrobky - nebo zemřete při pokusu!
Střílejte nepřátele, řešte hádanky a přežijte.

Akční

3. Geoblocking

... or this?

https://www.europarl.europa.eu/doceo/document/E-9-2021-004086_EN.html



4. Cross-border portability

- unrestricted access to (paid) subscribed online content of all European citizens, regardless of where they are present in EU territory.
- The presence abroad must be “temporary”: *‘temporarily present in a Member State’ means being present in a Member State other than the Member State of residence for a **limited period of time*** (Article 2(4));
- But only after login & payment!
- Problems with licensing (e.g. broadcasting sports)
- Potentially interesting in [UK after Brexit](#)

5. GDPR

- Personal data!
- Art. 6 / 1 / b
 - Processing shall be lawful only if and to the extent that at least one of the following applies: ... (b) processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; ...
- Etc.

5. GDPR - Information and access to personal data (Art. 15-23)

- Right to be informed about the processing of personal data
 - Article 13 (where the data comes directly from the subject)
 - Article 14 (where the data are collected elsewhere)
- Right of access to data (Art. 15)
- Right to rectification / correction (Art. 16)
- Right to erasure ('right to be forgotten') (Art. 17)
- Right to restriction of processing (Art. 18)
- Right to data portability (Art. 20)
- Right to object (Art. 21)
 - When processing for: legitimate interest **or** performance of a task in the public interest **or** direct marketing
- Right to protection against automated individual decision-making, including profiling (Art. 22)

6. Class actions?

- Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC

Next step?

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**

- More visible pricing, sanctions, information on consumer rights
- Impacts on online marketplaces
- E.g. "black friday" practices (discount deception)

Digital Markets Act & Digital Services Act & other introduced acts

Overall conclusion?



**Thank you for
your attention.**

Any questions?

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CONSUMER PROTECTION IN THE EU

Providing more and better
information on the
sustainability of products

Establishing a right to repair for
consumers

The European Parliament
wants to improve
consumer protection in
the EU by:

Improving product safety,
especially for products sold
online

Making sure green claims in
advertisements are backed up
with evidence (claims such as
CO₂-neutral)

