

RIGHTS OF CONSUMERS.

EU CONSUMER PROTECTION LAW

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	<p>RIGHTS OF CONSUMERS.</p> <p>•</p> <p>READING LESSON</p> <p> 35 MINUTES</p>	<p><i>Dr. Kitti Bakos-Kovács PhD.</i> <i>assistant professor</i></p> <p>University of Szeged</p> <p>Faculty of Law and Political Sciences</p> <p>Institute of Civilistic Sciences</p>
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1. Fundamental of consumers in the EU
2. General rights of consumers in consumer contract law
3. Special rights for consumers in specific sectors

1. Fundamentals of consumers in the EU

From the middle of XXth century consumer rights appeared between human rights to serve the protection of market autonomy of individuals ensuring and confounding basic level of his or her security.

According to **Council Resolution** of 14 April **1975** on a preliminary programme of the European Economic Community for a consumer protection and information policy¹ **declared the principle of consumer protection** such as *protecting the health, safety and economic interests of the consumer, enforcement of consumer rights, rights to information, consumer education and representation if interests.*²

a) *The protection of consumers from hazards to their health and safety*

Free movement of goods is also secured by through the harmonization of national rules applied for product safety. Provisions of legal acts, that regulate special requirements in each industrial sector, aim to ensure that **only safe products are placed on and made available on the common market.** Mandatory rules of product safety **also obligated producers and distributors.**³

According the rules of product safety only safe product can be put into circulation on the market; producers are required to provide safety products. Undertakings should only sell products which are safe, and inform consumers of any risks associated with the products they supply. Distributors should help in ensuring compliance with the applicable safety requirements. The obligations placed on distributors apply in proportion to their respective responsibilities.⁴

Both producers and distributors should **cooperate with the competent authorities** in action aimed at preventing risks and inform them when they conclude that certain products supplied are dangerous.⁵

The *General Product Safety Directive* is complemented sector specific legislation such as *specific rules* that apply to toys, electrical and electronic goods, cosmetics, chemicals and other specific product groups. It does not cover pharmaceuticals, medical devices or food, which fall under separate legislation.⁶

b) *The promotion and protection of the economic interests of consumers*

Price indication, prohibition of unfair contractual terms and unfair commercial practices solve the protection of economic interests of consumers before, during and after commercial transactions.

c) Consumer education

Consumer education is the preparation of an individual to be capable of making informed decisions when it comes to purchasing products. Consumer education can help consumers to make more informed decisions.⁷ It can be defined as a **process of developing and enhancing skills and knowledge to make informed and well-reasoned choices.**⁸

d) Access of consumers to adequate information

This right states that **undertakings should always provide consumers with enough appropriate information to make intelligent and informed product choices.** Product information provided by an undertaking should always be **complete and truthful.** This right aims to achieve **protection against misleading information** in the areas of financing, advertising, labelling, and packaging.

Information provided by undertakings should be able to grant for consumers to acquire such knowledge that (1) help consumers to make choice between products and services and (2) **can inform consumers about** the existence or nature of the product, the main characteristics of the product, the price or the manner in which the price is calculated, the need for services, part, replacement or repair, the nature, attributes and rights of the trader or his agent and the rights of consumers.⁹

Legal regulation of **labelling** also requires that pre-packaged products bear accurate and meaningful information to help consumers with making informed purchasing decisions. Labelling is an important market tool which should be viewed as an integral part of communication between parties. For the consumer it provides to pass on essential or useful information about products.¹⁰

e) Availability of effective consumer redress

Government should establish or maintain legal and/or administrative measures to enable consumers or organizations **to obtain redress** through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedure should take particular account of the needs of low-income consumers. **Information on available redress and other dispute-resolving procedures should be made available to consumers.**¹¹

Consumer redress is achieved mainly through **private enforcement and collective actions.** Consumers have the right to enforce rights and claim for damages **in court** or can demand on the way of each **alternative dispute resolution mechanism.** *Online Dispute Resolution* is a multilingual website that allows consumers to submit complaints over cross-border purchases of products or services where the contract was concluded online.

Collective actions can help consumers in such situations to share legal and expert costs, for instance when expensive technical expertise is necessary, and also relieves the courts of the burden of hearing a large number of individual cases.

Consumer protection rules are **also enforced by national public authorities.** Public authorities are seeking to remove bad practices and products from the market through bans, fines, recalls etc. The *Consumer Protection Cooperation Regulation* harmonises the powers of national competent authorities and lays down rules on their **cooperation with counterparts in other Member States.**¹²

f) Consumer groups

This right ensures to facilitate the developing of independent consumer groups. It grants freedom **to form consumer groups or organizations** and **the opportunity of such organizations to present their views in decision-making processes affecting consumers or before court.**¹³

2. General rights of consumers in consumer contract law

EU legislation declares consumer rights regarding consumer contract law. It focuses such rights that consumers have in contractual relationship with undertaking.

Directive 2011/83/EU on consumer rights should be applied – *taking into consideration in the directive determined exception* – **for all sales or service contracts between consumer and undertaking.** Among these contracts **special harmonisation** of certain aspects of consumer **distance and off-premises contracts** is necessary for the promotion of a real consumer internal market.¹⁴



This Directive establishes special **rules on information to be provided for consumers** if they conclude contracts with undertakings. For distance contracts and off-premises contracts special provisions are in force how to inform consumers. This directive also regulates **the right of withdrawal for distance and off-premises contracts** if the agreement was conducted between undertaking and consumer.¹⁵

According to Preamble 20 of this directive the definition of **distance contract** should cover all cases where a contract is concluded between the trader and the consumer under an organised distance sales or service-provision scheme with *use of one or more means of distance communication* (such as mail order, Internet, telephone or fax). An **off-premises contract** should be defined as a contract concluded *with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader*, for example at the consumer's home or workplace.¹⁶



Directive 2011/83/EU on consumer rights doesn't affect national law in the area of contract law for contract law aspects that are not regulated by the directive. National laws regulate conclusion or the validity of a contract, the general contractual legal remedies, the rules on public economic order and the rules on unethical legal transactions.¹⁷ Therefore, formal requirements are prescribed and harmonised for distance and off-premises contracts at EU level. Member States shall not impose any further formal precontractual information requirements for the fulfilment of the information obligations laid down in the directive.¹⁸



a) Access of consumers to adequate information

Before the consumer is bound by such offer or contract that cannot be qualified as distance or off-premises contract trader has to inform the consumer in a clear and comprehensible manner. Trader is not obligated to provide information for consumers if such information is already apparent from the context.

- the main characteristics of the goods or services
- the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number
- the total price of the goods or services inclusive of taxes
- the arrangements for payment, delivery, performance, deadline for delivery, the trader's complaint handling policy
- existence and the conditions of after-sales services and commercial guarantees,
- the duration of the contract
- other information about functionality and any relevant interoperability of digital content.¹⁹

Rules for providing information for consumers by distance and off-premises contracts contain some disparities from abovementioned criterions.

HERE, DIFFERENCES ARE PRESENTED FOR DISTANCE AND OFF-PREMISES CONTRACTS:

- Traders shall provide information for consumers **in all case, exception is not mentioned** by the directive. That means it is not possible to relieve traders of providing in the directive required information for consumers if such information is already apparent from the context.
- **Email address or fax number can be released for consumers** as identification in order to ensure an effective and quick communication between parties. **Geographical address of the place of business of the trader** has to be given for consumers *if this place is different from at which the trader is established*.
- **Detailed regulation is prescribed for providing information about price of the goods or services.**
- The **cost of using the means of distance communication** for the conclusion of the contract has to be also indicated.
- **Conditions of practice of right of withdrawal** (time limit, procedures for exercising that right, model for statement, cost of returning the goods, in which cases consumer cannot exercise or lose this right) compose essential elements of information provided or published for consumers.
- **Further information** should be presented with regard taking into consideration all circumstances of each case such as the *existence of relevant codes of conduct* that the undertaking applies during its activities, *the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer* at the request of the trader and at least the *possibility of having recourse to an out-of-court complaint and redress mechanism*, to which the trader is subject, and the methods for having access to it.²⁰

b) Right of withdrawal

Consumer can cancel distance or off-premises contracts without giving any reasons and without incurring any penalty that he or she has already paid and the goods was delivered for him or her. The exercise of the right of withdrawal shall terminate the obligations of the parties.

The same withdrawal period is applied to all distance and off-premises contracts. Right of withdrawal is only possible by distance contracts or off-premises selling, purchasing or service-providing; *EU law doesn't lay foundation of the right of withdrawal by other types of contracts*. The right of withdrawal is fully harmonised in the EU. This means that the same rules apply in all Member States in this regard.²¹

A withdrawal of the contract can be declared within 14 days. A withdrawal of a contract has to be made in writing. Consumer do not need to mention reasons for withdrawal.²² In some cases a consumer does not have the right to cool-off a contract. It is compulsory for traders to inform consumers about conditions and exercising of right of withdrawal.

In the case of **service contracts** the withdrawal (cooling-off) period should expire after 14 days from the conclusion of the contract. In the case of **sales contracts**, the withdrawal period should expire after 14 days from the day on which the consumer or a third party other than the carrier and indicated by the consumer, acquires physical possession of the goods.²³

If the trader has not adequately informed the consumer prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. A 12-month limitation period is introduced into the legal regulation.²⁴ If the trader makes up for informing consumers about conditions of right of withdrawal, the withdrawal period shall expire 14 days after the day upon which the consumer receives that information.

After withdrawing from the contract consumer has to send back the product to the trader and bear the costs of returning the goods. Trader is obligated to reimburse all payments that he received from the consumer as well as the price of goods, costs of delivery etc.

EXERCISE

Please read the following sources to come detailed knowledge about right of withdrawal.

1. **From Article 9 to Article 16 of Directive 2011/83/EU on consumer rights available at**
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&from=EN>
2. **FAQ on the right of withdrawal in e-commerce**
available at <https://ecommercetrustmark.eu/factsheets/english/Right-of-Withdrawal.pdf>
3. **Consumer Law Ready – Module 2 – The right of withdrawal**
available at https://www.consumerlawready.eu/sites/default/files/2018-03/CLR_Module_2_UK.pdf

Please answer in details for the following questions.

- How is trader obligated to inform consumers about conditions of right of withdrawal?
- Please determine exactly according to the regarding article of the directive that from which date the cooling-off period is begin?
- How can the consumer exercise the right of withdrawal?
- What are the obligations of traders according to regarding article of the directive if consumer exercises the right of withdrawal?
- What are the obligations of consumers if he or she cancel the distance or off-premises contract?
- Which contracts are excluded from application of right of withdrawal?
- What are legal consequences if consumer exercises the right of withdrawal?

3. Special rights for consumers in specific sectors

The information requirements provided for in Directive 2011/83/EU on consumer rights should complete the information requirements of directive on certain legal aspects of information society services, in particular **electronic commerce**.

Directive 2008/48/EC on **credit agreements for consumers** also regulates special rights in order to ensure high level of consumer protection in the field of consumer credits.

All EU citizens enjoy general consumer rights guaranteed in EU legislation, as well as a set of defined **energy rights** that have been in force since the opening up of the energy supply market in 2007.²⁵

QUESTIONS

- What are the fundamental of consumers in the EU? Please present them shortly.
- How can product safety serve the protection of consumers?
- Which legal means can serve the effective consumer redress?
- On which contracts is general directive on consumer contracts applied?
- Of what do the trader inform consumers in case of other contracts than distance and off-premises contracts?
- Of what do the trader inform consumers in case of distance and off-premises contracts?
- What is right of withdrawal?
- What are the main legal guarantees if consumer withdraw the contract?
- What are special sectors where special consumer rights are declared?

ENDNOTES

¹ Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31975Y0425\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31975Y0425(01)&from=EN)

² Zsolt Hajnal „Fogyasztói alapjogok a hatályos magyar jogi szabályozás és az európai unió fejlődési tendenciák tükrében” (Debreceni Jogi Műhely; available at

<http://fore.hu/uploads/pages/fore-2-az-alapveto-fogyasztoi-jo-31fdea717e.pdf>; See at Guidelines for Consumer Protections, UN Department of International Economic and Social Affairs, A/RES/39/248 (1986). Available at <http://hrlibrary.umn.edu/links/consumerprotection.html>

³ Bakos-Kovács Kitti „Product Safety in the European Union – Selected Decisions from the Jurisdiction of ECJ” (Ljubomir, Stajid (ed.) Harmonizacija srpskog i mađarskog prava sa pravom Evropske unije = A szerb és a magyar jog harmonizációja az Európai Unió jogával = Harmonisation of Serbian and Hungarian Law with the European Union Law : Tematski zbornik = Tematikus tanulmánykötet = Thematic Collection of Papers; Újvidék; 2017.; 501-519. pp.

⁴ Preamble 20 of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety

⁵ Preamble 21 of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety

⁶ General Product Safety Directive available at https://ec.europa.eu/info/general-product-safety-directive_en

⁷ Consumer education available at https://en.wikipedia.org/wiki/Consumer_education

⁸ Consumer Education Policy Recommendations of the OECD’S Committee on Consumer Policy available at <https://www.oecd.org/sti/consumer/44110333.pdf>

⁹ Article 6 of 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

¹⁰ Zsolt, Hajnal Op. Cit.; Labelling: competitiveness, consumer information and better regulation for the EU available at https://ec.europa.eu/food/sites/food/files/safety/docs/labelling-nutrition_better-reg_competitiveness-consumer-info_en.pdf

¹¹ Guidelines for Consumer Protections, UN Department of International Economic and Social Affairs, A/RES/39/248 (1986). Op. Cit.

¹² Enforcement of consumer protection legislation available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651962/EPRS_BRI\(2020\)651962_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651962/EPRS_BRI(2020)651962_EN.pdf)

¹³ Az alapvető fogyasztói jogok, Op. Cit.; Consumer policy: principles and instruments available at <https://www.europarl.europa.eu/factsheets/en/sheet/46/consumer-policy-principles-and-instruments>

¹⁴ Preamble 4 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

¹⁵ Preamble 9 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights; Picture is available at https://en.wikipedia.org/wiki/Eurasian_blue_tit

¹⁶ Preamble 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

¹⁷ Preamble 14 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights; See detailed information at A jogérvényesülési Főigazgatóság Iránymutatása Tárgy: Az Európai Parlament és a Tanács

2011/83/EU irányelve (2011. október 25.) a fogyasztók jogairól, a 93/13/EGK tanácsi irányelv és az 1999/44/EK európai parlamenti és tanácsi irányelv módosításáról, valamint a 85/577/EGK tanácsi irányelv és a 97/7/EK európai parlamenti és tanácsi irányelv hatályon kívül helyezéséről https://ec.europa.eu/info/sites/info/files/crd_guidance_hu_updated.pdf

¹⁸ Article 7 and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

¹⁹ Article 5 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

²⁰ Article 6 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

²¹ Consumer Law Ready – Module 2 – The right of withdrawal available at

https://www.consumerlawready.eu/sites/default/files/2018-03/CLR_Module_2_UK.pdf

²² Right of withdrawal when shopping online available at <https://europakonsument.at/en/page/right-withdrawal-when-shopping-online>

²³ Preamble 40 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

²⁴ Preamble 43 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

²⁵ See at https://ec.europa.eu/energy/topics/markets-and-consumers/energy-consumer-rights/protecting-energy-consumers_en

*** Date of downloading of online literatural sources is 01 March 2021.**