

DG JUSTICE GUIDANCE DOCUMENT

concerning

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

The purpose of this guidance document is to facilitate the effective application of [Directive 2011/83/EU](#) on consumer rights ('the Directive'), adopted on 25 October 2011. Member States were required to transpose it into national laws by 13 December 2013. All national transposition measures have to apply from 13 June 2014.

This document is not legally binding and provides only guidance. The authoritative interpretation of EU law remains within the sole remit of the Court of Justice (CJEU). This document is not a formal interpretation of EU law, nor does it provide legal advice on issues of national law.

This guidance is being published under the sole responsibility of Directorate-General for Justice. It is the result of work carried out in cooperation with and after consulting Member States' authorities in charge of the transposition and enforcement of the Directive and industry and consumer stakeholders. To achieve the Directive's objectives, national authorities and courts should implement it in a uniform and consistent way. To help them do this, this document provides guidance on the Directive's key concepts and provisions. It also includes practical examples that show how the Directive should work.

This guidance is intended to be **a living document**. It is available online and will be **supplemented and updated when necessary**, taking into account the experience from its practical application. It will evolve to address new challenges in the market and to take into account developments in European and national case law.

An optional **model for the display of pre-contractual consumer information for online digital products** is in annex. It is a voluntary tool to make it easier for traders to comply with the Directive's information requirements and in this way supports transparent and comparable consumer information.

TABLE OF CONTENTS

1.	INTRODUCTION.....	4
2.	THE DIRECTIVE'S SCOPE OF APPLICATION	5
2.1.	CONTRACTS COVERED	5
2.2.	MIXED PURPOSE CONTRACTS.....	6
2.3.	APPLICATION OF THE DIRECTIVE TO CONTRACTS FOR 'FREE' PRODUCTS.....	8
2.4.	CONTRACTS TO WHICH THE DIRECTIVE DOES NOT APPLY.....	8
2.4.1.	<i>Rental contracts and building contracts.....</i>	<i>8</i>
2.4.2.	<i>Contracts established by a public office-holder.....</i>	<i>9</i>
2.4.3.	<i>Contracts for goods intended for current consumption</i>	<i>9</i>
2.4.4.	<i>Automated sales.....</i>	<i>10</i>
2.4.5.	<i>Certain contracts related to electronic communications</i>	<i>10</i>
2.5.	POSSIBLE EXEMPTION OF LOW VALUE OFF-PREMISES CONTRACTS	12
2.6.	RULES FOR PUBLIC AUCTIONS.....	12
2.7.	TRANSFER OF EXISTING CONTRACTS BETWEEN CONSUMERS	12
3.	OFF-PREMISES CONTRACTS.....	13
3.1.	INTRODUCTION.....	13
3.2.	CONTRACTS CONCLUDED OUTSIDE THE TRADER'S BUSINESS PREMISES	13
3.3.	CONTRACTS CONCLUDED AFTER ADDRESSING THE CONSUMER OUTSIDE THE BUSINESS PREMISES	15
3.4.	CONTRACTS CONCLUDED DURING AN EXCURSION ORGANISED BY THE TRADER.....	16
4.	PRE-CONTRACTUAL INFORMATION.....	16
4.1.	GENERAL REQUIREMENTS	16
4.1.1.1.	Links with the Unfair Commercial Practices Directive	17
4.1.1.2.	Information 'already apparent from the context'	17
4.2.	LINKS WITH INFORMATION REQUIREMENTS UNDER OTHER DIRECTIVES.....	18
4.2.1.	<i>Information requirements under the eCommerce and Services Directives</i>	<i>18</i>
4.2.1.1.	Additional information requirements under the eCommerce and Services Directives	18
4.2.1.2.	Overlapping information requirements	19
4.2.2.	<i>Further information requirements under eCommerce and Services Directives</i>	<i>19</i>
4.2.3.	<i>Information requirements in sector-specific legislation</i>	<i>20</i>
4.2.4.	<i>Exemption of 'day-to-day' transactions</i>	<i>20</i>
4.2.5.	<i>The binding nature of pre-contractual information</i>	<i>20</i>
4.2.6.	<i>Additional language requirements.....</i>	<i>21</i>
4.2.7.	<i>Burden of proof</i>	<i>21</i>
4.3.	COMMON REQUIREMENTS FOR ON-PREMISES AND DISTANCE / OFF-PREMISES CONTRACTS	22
4.3.1.	<i>Main characteristics</i>	<i>22</i>
4.3.2.	<i>Identity and contact details.....</i>	<i>22</i>
4.3.2.1.	Place of establishment	22
4.3.2.2.	Place of business	23
4.3.2.3.	Other contact details.....	23
4.3.2.4.	Identity and address of the principal.....	24
4.3.3.	<i>Price.....</i>	<i>25</i>
4.3.4.	<i>Arrangements for executing the contract – payment and delivery.....</i>	<i>26</i>
4.3.4.1.	Time of delivery or performance.....	26
4.3.4.2.	Arrangements for payment	27
4.3.5.	<i>Guarantees and after-sales services.....</i>	<i>27</i>
4.4.	DURATION AND TERMINATION OF THE CONTRACT	28
4.5.	ADDITIONAL REQUIREMENTS FOR OFF-PREMISES AND DISTANCE CONTRACTS.....	29
4.5.1.	<i>Cost of using distance means of communication</i>	<i>29</i>
4.5.2.	<i>Deposits and financial guarantees</i>	<i>29</i>
4.5.3.	<i>Out-of-court redress mechanisms</i>	<i>29</i>
5.	SPECIAL REQUIREMENTS FOR DISTANCE CONTRACTS	30
5.1.	DEFINITION OF A DISTANCE CONTRACT	30

5.2.	PRE-CONTRACTUAL INFORMATION.....	31
5.2.1.	<i>Additional requirements for presenting certain pre-contractual information</i>	31
5.2.2.	<i>Requirements for the order confirmation button</i>	32
5.2.3.	<i>Contracts concluded over means of distance communication with limited space or time</i>	33
5.3.	CONTRACTS CONCLUDED BY TELEPHONE	34
5.4.	CONFIRMATION OF THE CONTRACT	35
6.	THE RIGHT OF WITHDRAWAL	37
6.1.	CALCULATION OF THE RIGHT OF WITHDRAWAL PERIOD.....	37
6.1.1.	<i>Introduction</i>	37
6.1.2.	<i>Starting point of the withdrawal period</i>	38
6.2.	INFORMATION ABOUT THE RIGHT OF WITHDRAWAL.....	39
6.3.	EXERCISE OF THE RIGHT OF WITHDRAWAL.....	42
6.4.	RIGHT OF WITHDRAWAL IN RESPECT OF GOODS	42
6.4.1.	<i>Multiple or defective goods</i>	42
6.4.2.	<i>Return of the goods</i>	43
6.4.3.	<i>Reimbursement of the payments received from the consumer</i>	44
6.4.4.	<i>Consumer's liability for mishandling of the goods</i>	46
6.4.5.	<i>Risk when returning the goods to the trader</i>	48
6.5.	WITHDRAWAL FROM THE PROVISION OF SERVICES	49
6.5.1.	<i>Consumer's consent to immediate performance and compensation obligation</i>	49
6.5.2.	<i>Consequences of the trader's failure to comply with the obligations</i>	51
6.6.	TERMINATION OF THE CONTRACT FOLLOWING THE EXERCISE OF THE RIGHT OF WITHDRAWAL.....	52
6.7.	ANCILLARY CONTRACTS	53
6.8.	EXCEPTIONS FROM THE RIGHT OF WITHDRAWAL	54
6.8.1.	<i>Goods made to the consumer's specifications or clearly personalised</i>	54
6.8.2.	<i>Goods with specific characteristics</i>	55
6.8.3.	<i>Contracts with a specific date or period of performance</i>	55
7.	DELIVERY.....	56
8.	PASSING OF RISK.....	58
9.	FEES FOR THE USE OF MEANS OF PAYMENT.....	58
9.1.	INTRODUCTION.....	58
9.2.	DEFINITION OF 'FEES'	59
9.3.	DEFINITION OF THE 'COST' BORNE BY THE TRADER.....	60
9.3.1.	<i>The Merchant Service Charge and other direct costs for processing card payments</i>	60
9.3.2.	<i>General costs of running a business that are indirectly linked to processing payments</i>	61
9.3.3.	<i>Eligible costs justifying a fee for the use of means of payment</i>	61
9.4.	PAYMENTS IN FOREIGN CASH	62
10.	COMMUNICATION BY TELEPHONE	62
11.	ADDITIONAL PAYMENTS	63
12.	ONLINE DIGITAL PRODUCTS	64
12.1.	INTRODUCTION.....	64
12.2.	THE RIGHT OF WITHDRAWAL	65
12.3.	INFORMATION OBLIGATIONS.....	67
12.3.1.	<i>Functionality</i>	67
12.3.2.	<i>Interoperability</i>	68
	ANNEX I – MODEL FOR THE DISPLAY OF CONSUMER INFORMATION ABOUT ONLINE DIGITAL PRODUCTS.....	69
	ANNEX II – CONSUMER INFORMATION REQUIREMENTS IN THE CONSUMER RIGHTS, SERVICES AND ECOMMERCE DIRECTIVES	73

1. INTRODUCTION

The purpose of the Directive is to achieve a high level of consumer protection across the EU and to contribute to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts concluded between consumers and traders. **In this guidance document Directorate-General for Justice gives its views on and suggestions for implementing most of the Directive's articles.**

As from 13 June 2014, the Directive replaces [Council Directive 85/577/EEC](#) of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises¹ and [Directive 97/7/EC](#) of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.²

Whilst these former Directives only provide for a minimum level of harmonisation of consumer protection rules, the Consumer Rights Directive is, in principle, a full harmonisation Directive (see its Article 4). In particular, it provides a single set of core rules for distance and off-premises contracts. It strengthens consumer protection, for example by introducing stricter pre-contractual information requirements and a uniform right of withdrawal period. At the same time, the Directive also reduces costs for cross-border traders, for whom the uniform rules across the EU will lead to lower compliance costs.

The new Directive retains certain provisions of the former Directives 85/577/EC and 97/7/EC. Therefore, the relevant case law of the Court of Justice of the European Union related to the interpretation of these former Directives is used in this document wherever applicable.

Because specific EU rules were put in place in certain sectors since Directives 85/577/EEC and 97/7/EC were adopted, the Consumer Rights Directive has a longer list of subjects that are excluded from its scope of application. For example, the Directive does not apply to contracts for financial services, including insurance and investment; these were subject to Directive 85/577/EC and also gave rise to a number of Court of Justice rulings. Social and healthcare services, gambling, package travel, timeshare and related holiday services are also excluded. Passenger transport services are excluded in principle, with the exception of Articles 8(2), 19 and 22.

However, as opposed to Directive 97/7/EC, the Consumer Rights Directive applies to online auctions in view of the fact that this sales channel is now widely used also by professional traders.

¹ OJ L 372, 31.12.1985, p. 31.

² OJ L 144, 4.6.1997, p. 19.

2. THE DIRECTIVE'S SCOPE OF APPLICATION

2.1. Contracts covered

The Directive regulates certain aspects of contracts between a trader and a consumer. Its structure is based on a division of contracts into:

- (1) contracts concluded outside the trader's business premises (**off-premises contracts**);
- (2) contracts concluded using distance communication (internet, telephone etc.) (**distance contracts**); and
- (3) contracts other than distance or off-premises contracts (hereinafter referred to as '**on-premises' contracts**).

The Directive sets out the pre-contractual information requirements for all types of contracts (Articles 5 and 6) and a number of formal requirements for the conclusion of off-premises and distance contracts (Articles 7 and 8). It provides detailed rules regarding the consumer's right of withdrawal from the off-premises and distance contracts (Articles 9 to 16). It addresses some aspects of the delivery of goods (Articles 18 and 20) and imposes specific obligations on traders concerning payment surcharges (Article 19), the cost of post-contractual telephone contacts (Article 21) and the consumer's consent to additional payments (Article 22).

The Directive further distinguishes between the following types of contracts:

- (1) **sales contracts**;
- (2) **service contracts**;
- (3) contracts for the supply of digital content which is not supplied on a tangible medium (hereinafter referred to as: '**contracts for online digital content**'); and
- (4) contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume of set quantity, or of district heating (hereinafter referred to as '**contracts for the supply of public utilities**').

Sales contracts and service contracts are defined in Article 2(5) and (6) of the Directive. Contracts for online digital content and for the supply of public utilities are not expressly defined but recital 19 explains that, for the purposes of the Directive, they are **not classified as sales or as service contracts**.

Recital 19 also clarifies that the Directive considers **digital content supplied on a tangible medium**, such as a CD or a DVD, as goods.

Although many provisions of the Directive apply generally to all four types of contracts, there are rules that apply to only a specific type of contract. In particular, different contracts (see Article 9) have different rules on calculating the period during which the right of withdrawal can be exercised (see also Chapter 6 on the right of withdrawal).

Since the definition of the sales contract (see below) refers to the transfer of ownership of goods by the trader to the consumer (i.e. business-to-consumer contracts), the Directive does not seem to apply to contracts under which it is **the consumer who transfers goods to the**

trader, for example, a second-hand car or jewellery. Furthermore, the Directive does not apply to contracts concluded between consumers.

2.2. Mixed purpose contracts

Article 2

(5) *'sales contract' means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;*

(6) *'service contract' means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;*

In practice, many contracts concluded between traders and consumers, to which the Directive applies, contain elements of both services and goods. In these cases, the last part of the definition under Article 2(5) is relevant since it defines a sales contract also as *'any contract having as its object both goods and services'*.

According to the definition under Article 2(5), the criterion for classifying a contract as a 'sales contract' is the **transfer of the ownership of goods** to the consumer against payment of the price thereof. Therefore, if a contract's main purpose is the transfer of ownership of certain goods, it should be classified as a sales contract even if it also covers related services provided by the seller, such as installation, maintenance or any other processing, irrespective of the relative value of the goods and services.

Examples of contracts that cover both goods and services and should usually be considered as sales contracts because of their main purpose:

- *the purchase of a new kitchen set, including its installation at the consumer's apartment;*
- *the purchase of specific construction elements, such as windows and doors, including their installation in the consumer's house;*
- *the purchase of a new mobile handset bundled with a subscription to an electronic communications service.*

In contrast, if the transfer of the ownership of specific goods is not the main purpose of the mixed contract, the contract should not be considered a sales contract.

Examples of contracts that cover both services and goods that should be classified as service contracts because of their main purpose:

- *a contract for the repair, renovation and construction of an annex to a building (see recital 26);*
- *a contract for attending a lecture, including delivery of pens and folders to the participants;*

- *a contract for a training course, including delivery of a course book for each participant.*

This interpretation is supported by well-established case-law of the Court of Justice on the free movement of goods and the freedom to provide services, which remains pertinent also in the context of this Directive.

For example, in case [C-20/03 Marcel Burmanjer](#) the Court stated that an economic activity should be examined in the context of **either** the free movement of goods **or** the freedom to provide services if one of these elements **'is entirely secondary in relation to the other and may be considered together with it'** (see, in particular paragraphs 34-35).³

This also means that a mixed contract should be considered as sales contract if facts show that its actual purpose is the transfer of the ownership of goods:

- *For example, if the sale of the course book had a particularly prominent place in the trader's offer for a training course and in communication between the parties, and if this course book had significant relative value compared to the overall price of the training, the contract may be classified as a sales contract rather than a service contract for the purposes of the Directive.*

In a nutshell, each mixed contract should be classified based on its real main purpose.

The fact that the contract may include an option to enter into subsequent agreements should not per se change its characteristics. For example:

- *If a contract for the rental of goods only includes an option to transfer ownership, not an obligation, it should be classified as a service contract for the purposes of the Directive.*

Classifying a contract as either a sales or a service contract determines how the withdrawal period is calculated (Article 9). For **service contracts**, the 14-day withdrawal period starts running from the conclusion of the contract. For **sales contracts**, the withdrawal period only starts running after the goods are received. In addition, some of the Directive's provisions, such as Articles 18 and 20 on delivery and the passing of risk, only apply to sales contracts.

The same sales or service contract may also cover services that are not governed by the Consumer Rights Directive. For example, a sales or service contract may make it possible to pay the price in instalments at a certain interest rate. Such a contract would also be subject to the specific rules governing consumer financial services.⁴ The rules on ancillary contracts in Article 15 of the Consumer Rights Directive would apply to such contracts by analogy (see Chapter 6.7).

³ The same approach was confirmed more recently by the Court in case [C-108/09 Ker-Optika bt](#) (see paragraph 43).

⁴ In particular, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

2.3. Application of the Directive to contracts for 'free' products

The definitions of sales and service contracts set out in Article 2(5) and (6) refer to the consumer paying a 'price'. The reference to 'price' in this context would seem to solely relate to payment in money, which would also include vouchers,⁵ gift cards or loyalty points with a specified monetary value. Consequently, the Directive does **not** seem to apply to gifts or to services provided by the trader for free.

The Directive **does** seem to apply to service contracts that include a **free trial period** and are automatically converted into paid contracts once the trial period ends (unless the consumer terminates the contract before the trial period ends).

As was already mentioned, the Directive distinguishes between sales and service contracts and contracts for the supply of public utilities and online digital content. Contrary to the definition of sales and service contracts, the Directive does not mention 'payment' for the latter two types of contracts. Therefore, it would seem to apply also to contracts for the supply of public utilities and online digital content even if they do not involve payment:

- *For example, the Directive applies to a contract for a free download of a game from an app store.*

2.4. Contracts to which the Directive does not apply

The types of contracts exempt from the scope of the Directive's application are listed under Article 3(3). The following exceptions merit further explanation. As a general rule, these exceptions must be interpreted narrowly.⁶

2.4.1. Rental contracts and building contracts

Article 3

3. *This Directive shall not apply to contracts:*

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

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

The exception under point (e) concerns the general category of immovable property, including land, whilst point (f) deals with buildings.

⁵ See recital 46, which, when explaining Article 13(1) on the reimbursement of the amounts received from the consumer, also expressly refers to consumers' payment with vouchers.

⁶ See, for example, Case C-215/08, *E. Friz GmbH*, paragraph 32: '*In this connection, it should first be observed that it is settled case-law that derogations from the rules of European Union law for the protection of consumers must be interpreted strictly (see, inter alia, Case C-481/99 Heiningen [2001] ECR I-9945, paragraph 31)*'.

Whereas the rental of accommodation for residential purposes is excluded from the scope of the Directive, the **rental of accommodation for non-residential purposes** is covered. This is also explained in Recital 26: '[...] *Service contracts in particular those related to the construction of annexes to buildings (for example a garage or a veranda) and those related to repair and renovation of buildings other than substantial conversion, **should be included in the scope of this Directive, as well as contracts related to the services of a real estate agent and those related to the rental of accommodation for non-residential purposes.***'

- *For example, renting a parking space or a party hall is subject to the Directive.*

2.4.2. *Contracts established by a public office-holder*

Article 3

3. This Directive shall not apply to contracts:

(i) which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;

The Directive does not identify the public office-holders referred to in this provision. However, it lays down the criteria they must fulfil for the contract to fall outside the Directive's scope. This exception only applies to contracts established by a public office-holder (such as a public notary) who is subject, under national law, to all the conditions under Article 3(3)(i):

- *For example, the exception would not apply to a contract for which a public office-holder, who has the statutory obligation to be independent and impartial, has merely certified the identity of the parties.*

For this exception to be applicable, it does not seem necessary for national law to **require** the contract in question to be concluded through the services of a public office-holder. The exception should also apply if one or both of the parties to the contract **voluntarily request** a public office-holder to establish their contract.⁷

2.4.3. *Contracts for goods intended for current consumption*

Article 3

3. This Directive shall not apply to contracts:

(j) for the supply of foodstuffs, beverages or other goods intended for current consumption in

⁷ See the different approach in [Directive 2008/48/EC](#) on credit agreements for consumers, which in Article 14 on the right of withdrawal refers to agreements that 'by law are required to be concluded' through the services of a notary: '6. Member States may provide that paragraphs 1 to 4 of this Article shall not apply to credit agreements which **by law are required to be concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 5 and 10.**'

the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;

This exception requires two conditions to be met, namely:

- (a) that the trader delivers the goods on 'frequent and regular rounds', and
- (b) that these goods are for 'current consumption in the household'.

The explicit reference to delivery to the consumer's 'workplace' in this provision suggests that that the actual consumption of the goods does not necessarily need to take place at home.

2.4.4. Automated sales

Article 3

3. This Directive shall not apply to contracts:

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

This exception would apply to contracts concluded on automated commercial premises such as:

- *Automated gas stations without the physical presence of the trader's representative for the conclusion of the contract.*

2.4.5. Certain contracts related to electronic communications

Article 3

3. This Directive shall not apply to contracts:

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

This provision exempts two types of contracts from the scope of the Directive's application.

The first type is **contracts concluded with electronic communications operators through public payphones for their use**. 'Public pay telephone' is defined in Article 2 of the Universal Service Directive 2002/22/EC (dealing with end-user rights in the electronic communications sector) as telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

- *Since this exception applies to contracts concluded 'through' public payphones, it should cover the cases in which the contract is concluded by, for example, inserting coins or swiping a credit card in the public payphone;*
- *The exception should not apply to contracts concluded with operators of public payphones by, for example, the prior purchase of a pre-paid calling card.*

The second part of Article 3(3)(m) concerning **contracts concluded for the use of 'one single connection' established by the consumer** has a broader scope. Unlike the contracts for using public payphones, no party to this kind of contract is specified, which suggests that not only contracts with electronic communications operators are covered. Furthermore, nothing is specified concerning the purpose or content of this kind of contract.

This exception would seem to cover, for example:

- *A contract with an Internet café for a single Internet session.*

In contrast, the exception should not apply to **contracts for electronic communications services** covering a certain period and/or volume of usage, for example:

- *Contracts concluded through the prior purchase of a pre-paid SIM card for mobile services or of an access code for Wi-Fi services.*

This exception would also seem to apply to contracts concluded with the providers of Premium Rate Services (PRS), i.e., services paid for through the consumer's telephone bill (also referred to as 'Value-Added Services' or 'Special Rate Services') in cases where the contract **is concluded and simultaneously fully performed by the single call made or an SMS sent by the consumer to the PRS number**, for example:

- *A call made to telephone directory inquiries or tele-voting in a show.*

In contrast, the exception should not apply to subscriptions and other situations where the voice call or SMS to a PRS number is merely **a means of concluding a contract**, which is performed subsequently:

- *For example, contracts concluded through a call made or SMS sent to a provider of traffic information, which is subsequently delivered to the consumer's device.*

If, in order to conclude a contract that is performed subsequently, the consumer must call or send an SMS to a PRS number, the trader must inform the consumer in advance about the cost, as this will be higher than the 'basic rate' under Article 6(1)(f) of the Directive (which includes the same rule as the one in Article 4(1)(g) of the replaced Distance Selling Directive 97/7/EC. The interpretation of the 'basic rate' concept is further discussed in Chapter 10 on Article 21 of the Directive.

The fact that the Directive does not apply to certain contracts involving PRS by virtue of Article 3(3)(m) does not mean that they are not subject to consumer protection rules. The EU regulatory framework for electronic communications, in particular the Authorisation Directive 2002/20/EC and the Universal Service Directive 2002/22/EC, enable Member States and the relevant National Regulatory Authorities to adopt specific measures to protect consumers in relation to PRS. Consequently, a number of Member States have implemented additional safeguards in this area, including, for example, caps on charges, an obligation to announce the price at the start of the call, etc.

2.5. Possible exemption of low value off-premises contracts

Article 3(4) allows Member States not to apply the Directive to off-premises contracts, for which the payment to be made by the consumer does not exceed EUR 50 or a lower value as defined under national law. If a Member State chooses to use this regulatory choice, there is a risk that the Directive gets circumvented by traders who may decide to artificially split a single contract above the set threshold into several contracts. As explained in recital 28: *'[...] Where two or more contracts with related subjects are concluded at the same time by the consumer, the total cost thereof should be taken into account for the purpose of applying this threshold.'* This principle would apply to:

- *For example, selling each book of a trilogy under three separate contracts or selling a pair of earrings under two separate contracts at the same time.*

2.6. Rules for public auctions

The replaced Distance Selling Directive 97/7/EC did not apply to contracts 'concluded at an auction' (Article 3(1)). The new Directive applies to auctions, subject to specific rules regarding 'public auction', defined under Article 2(13) as *'a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services'*.

For public auctions Article 6(3) makes it possible to replace the identity, contact details and geographical address of the establishment and place of business of the trader selling the goods or services with those of the auctioneer. Furthermore, there is no right of withdrawal from contracts concluded at a public auction pursuant to the exception in Article 16(k).

A public auction should give consumers the possibility to attend in person, even if it is also possible to make bids online or by telephone. In contrast, online auctions without the possibility to attend in person should not be considered public auctions.

Recital 24 specifies that *'[...] the use of online platforms for auction purposes which are at the disposal of consumers and traders should not be considered as a public auction within the meaning of this Directive.'* Accordingly, online auctions should be fully subject to the Directive regarding, e.g., the pre-contractual information to be provided before the consumer is bound by the contract (the bid) and the right of withdrawal.

2.7. Transfer of existing contracts between consumers

Article 3(5) states that *'This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.'*

Accordingly, if national contract law makes it possible for rights and obligations under an existing contract to be transferred from one consumer to another, no new contract would be concluded to which the Directive would apply.

- *For example, a consumer moving into a new house might simply take over from the previous tenant his or her rights and obligations concerning the supply of gas and electricity. They may inform the public utilities provider of the change jointly with the previous tenant, and the provider will then start billing the new tenant.*

If, in contrast, national law requires the new user/buyer of the accommodation to conclude a new contract with the public utilities provider (for instance, by filling in and signing standard forms), the Directive applies and in particular obliges the supplier to provide the consumer with all the pre-contractual information required under Article 5(1) or 6(1) depending on how the contract is classified (i.e. as a distance, off-premises or on-premises contract). This is without prejudice to information requirements under existing EU law in the energy sector⁸.

3. OFF-PREMISES CONTRACTS

3.1. Introduction

The notion of an 'off-premises contract' is broader under the Consumer Rights Directive than under the replaced Doorstep Selling Directive 85/577/EEC, which applied, in accordance with its Article 1, only to contracts concluded during: (1) an excursion organised by the trader away from his business premises; and (2) a trader's visit to the consumer's home or workplace, unless the visit was expressly requested by the consumer.

On the other hand, compared to Directive 85/577/EEC, more subject areas are excluded from the scope of the Consumer Rights Directive by virtue of Article 3. In particular, the new Directive does not apply to financial services (including insurance and investment – see definition in Article 2(12)), which were within the scope of Directive 85/577/EEC and the subject of several Court of Justice rulings⁹.

3.2. Contracts concluded outside the trader's business premises

Off-premises contracts are defined in Article 2(8) as follows:

Article 2

(8) 'off-premises contract' means any contract between the trader and the consumer:

- (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;*
- (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a); [...]*

⁸ See [Directive 2009/72/EC](#) on internal market in electricity and [Directive 2009/73/EC](#) on internal market in gas.

⁹ For example, see cases C-481/99, C-350/03, C-229/04, C-412/06, C-215/08 and C-166/11.

Business premises are defined in Article 2(9) as follows:

Article 2

(9) 'business premises' means:

- (a) any immovable retail premises where the trader carries out his activity on a permanent basis; or
- (b) any movable retail premises where the trader carries out his activity on a usual basis;

Recital 22 explains: '*Business premises should include premises in whatever form (such as shops, stalls or lorries) which serve as a **permanent or usual place of business for the trader**. Market stalls and fair stands should be treated as business premises if they fulfill this condition. Retail premises where the trader carries out his activity on a **seasonal basis**, for instance during the tourist season at a ski or beach resort, should be considered as business premises as the trader carries out his activity in those premises on a usual basis. Spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport, which the trader uses on an **exceptional basis** for his business activities as well as private homes or workplaces should not be regarded as business premises. [...]*'

Therefore, the notion of contracts '*concluded in the simultaneous physical presence of the trader and the consumer, **in a place which is not the business premises of the trader***' should cover trader's visits to the consumer's home or place of work that were already subject to Directive 85/577/EEC. Furthermore, under the new Directive, these contracts would be concluded 'off-premises' **irrespective of whether the visit was requested by the consumer or not**.

As explained in recital 22, 'business premises' means the trade's permanent or usual place of business in whatever form, including when used on a seasonal basis:

- *For example, contracts concluded with a trader at a market fair, which takes place regularly and lasts over a specified period of time, are likely to be on-premises contracts.*

In contrast, if the trader uses spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport **on an exceptional basis**, i.e., once or occasionally and for a short duration in a given location, the contracts concluded with consumers are likely to be off-premises contracts.

A trader will be aware of the nature of his activity and should act according to the rules governing either on-premises or off-premises contracts. Any disputes as to whether, for example, the right of withdrawal was applicable because the contract should have been considered an off-premises contract, will have to be assessed on a case-by-case basis.

Furthermore, in defining 'business premises' the following conclusion of the Court of Justice in case [C-423/97 Travel-Vac, S.L.](#) on the interpretation of Council Directive 85/577/EEC seems pertinent:

*'37. As regards the question whether the contract was concluded away from the trader's business premises, it must be observed that this concept refers to premises in which the trader usually carries on his business and **which are clearly identified as premises for sales to the public.**'*

Accordingly, if the trader uses premises that are not clearly identified as premises for selling to the public, the contracts concluded with consumers may need to be considered as off-premises contracts.

3.3. Contracts concluded after addressing the consumer outside the business premises

Article 2

(8) 'off-premises contract' means any contract between the trader and the consumer: [...]

(c) *concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or [...]*

Subparagraph (c) of Article 2(8) provides another example of off-premises contracts. The terms 'personally and individually addressed' in this provision should apply to offers and similar commercial communications (regardless of their legal classification) that are formalised into a contract immediately afterwards on the trader's business premises or through any means of distance communication.

For this provision to apply, the trader's offer should be addressed to a particular consumer, for example:

- *The trader's representative approaches the particular consumer in the street with an offer for a subscription to a monthly magazine or to holiday-related services (which are not subject to the specific rules under Directive 2008/122/EC¹⁰ and are therefore governed the Consumer Rights Directive) and the contract is immediately signed on the trader's nearby business premises.*
- *In contrast, the mere distribution of advertising leaflets in the street near the trader's premises without individual targeting of individual consumers would not count as 'personally and individually' addressing the consumer for the purposes of this provision.*

¹⁰ [Directive 2008/122/EC](#) of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts

In addition, for this provision to apply, the contract should be concluded immediately. The contract would not be immediately concluded if the consumer leaves the trader's premises after having been invited to them, and returns at his own initiative later, for example, the following day after having considered the offer.

3.4. Contracts concluded during an excursion organised by the trader

(8) 'off-premises contract' means any contract between the trader and the consumer: [...]

(d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;

In contrast to the replaced Directive 85/577/EEC, subparagraph (d) of Article 2(8) of the new Directive defines off-premises contracts as contracts concluded during an excursion organised by the trader **irrespective of whether the contracts are concluded away from or on the trader's business premises.**

Furthermore, the new Directive specifies that it covers both excursions with the 'aim' and 'effect' of promoting and selling products to the consumer, i.e., **it should not matter whether the consumer is informed beforehand about the intended sale of products during the excursion.**

The notion of 'excursion' includes journeys that involve sightseeing or other leisure-related activities rather than just transport to the place where the sale takes place. In applying this notion, it should not matter whether the trader selling the products during an excursion organises the transport himself or has made arrangements with a transport company:

- *For example, if a trader has made arrangements with a coach company to make sure that, during their excursion, tourists are also brought to his shop, the contracts concluded at the shop are likely to be off-premises contracts notwithstanding the fact that the shop in question is that trader's business premises.*
- *In contrast, a shuttle bus service organised by a shopping centre with the sole purpose of bringing the potential customers to the shopping centre is merely ancillary to the main purpose of the activity (i.e. to sell the goods and services) and should not be considered an 'excursion' for the purposes of Article 2(8).*

4. PRE-CONTRACTUAL INFORMATION

4.1. General requirements

Pre-contractual information requirements are set out in Articles 5 to 8 of the Directive. They are defined separately for on-premises contracts in Article 5(1) and for off-premises and distance contracts in Article 6(1). The requirements for off-premises and distance contracts are more extensive and build on those provided for on-premises contracts. The common or similar requirements are discussed together in this document and the differences are specified.

The information requirements concerning the functionality and interoperability of digital content (Article 5(1)(g)-(h) and Article 6(1)(r)-(s)), are addressed separately in Chapter 12.3. The information requirements concerning the right of withdrawal under Article 6(1)(h)-(k) are also addressed separately, in Chapter 6.

Both Article 5(1) and 6(1) require information to be provided in a '*clear and comprehensible manner*'. Recital 34 specifies that, in providing pre-contractual information, '*[...] the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.*'

4.1.1.1. Links with the Unfair Commercial Practices Directive

The Consumer Rights Directive covers all the information requirements laid down in Article 7(4) of the Unfair Commercial Practices Directive 2005/29/EC (UCPD), which requires that an invitation to purchase contains certain information, if not already apparent from the context. This information includes: the main characteristics of the product to an extent appropriate to the medium and the product; the address and identity of the trader; the price including taxes; arrangements for payment, delivery, performance; the complaint handling policy (if they depart from the requirements of professional diligence); and, where applicable, existence of the right of withdrawal.

Therefore, when providing pre-contractual information in accordance with the Consumer Rights Directive, a trader will also comply with the information requirements under the UCPD. This is without prejudice to the information requirements under the UCPD regarding the invitation of purchase prior to the pre-contractual stage, e.g., at the advertising stage.

4.1.1.2. Information 'already apparent from the context'

For **on-premises contracts**, Article 5 allows traders to not provide information that is '*already apparent from the context*'.

The concept of information '*already apparent from the context*' is also used in the UCPD. The 2009 [Guidance on the UCPD](#)¹¹ mentions the trader's geographical address and identity as information that can sometimes be considered as 'obvious or apparent from the context', for example, the address of a shop or restaurant that the consumer is already in. It also includes examples of goods whose main characteristics are apparent from looking at them (for further details see p. 49 – 52 of the Guidance on the UCPD on information requirements under its Article 7(4)).

For **off-premises contracts** Article 7(1) additionally requires the pre-contractual information to be '*legible and in plain, intelligible language*' and for **distance contracts** Article 8(1) requires information to be made available to the consumer '*in a way appropriate to the means*

¹¹ Commission Staff Working Document: Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices, 3 December 2009, SEC(2009) 1666. This document is currently under revision. An updated version of the Guidance is scheduled for publication by the end of 2014.

of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.'

Furthermore, Article 8(2) of the Directive has more demanding presentation rules for a subset of information requirements for contracts concluded by electronic means, which are further discussed in Chapter 5.

4.2. Links with information requirements under other Directives

4.2.1. Information requirements under the eCommerce and Services Directives

According to Article 4 '*Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive*'. One of the derogations from this full harmonisation requirement is Article 5(4), which allows Member States to adopt or maintain additional pre-contractual information requirements for **on-premises contracts**.

In contrast, the list of these requirements for off-premises and distance contracts is, in principle, exhaustive. However, according to Article 6(8), the information requirements laid down in this Directive are **additional to those included in the Services Directive 2006/123/EC and the eCommerce Directive 2000/31/EC**. If a provision of these two directives on the '*content and the manner in which the information is to be provided*' conflicts with a provision of the Consumer Rights Directive, the provision of the Consumer Rights Directive prevails.

The comparative table in Annex II sets out the information requirements under the Services Directive, eCommerce Directive and Consumer Rights Directive.

As shown in the table, all three Directives require information on **the trader's name and contact details** (geographical (postal) address, telephone, fax, e-mail). The differences in what each Directive requires and their consequences are discussed in detail in Chapter 4.3.2.

4.2.1.1. Additional information requirements under the eCommerce and Services Directives

The Services and eCommerce Directives additionally require information about the trader's **trade or other public register, VAT number, relevant professional bodies**, measures taken to avoid **conflicts of interest** and **relevant supervisory authorities**. Under the Services Directive, some of this information only has to be provided at the recipient's request (Article 22(3)).

The eCommerce Directive additionally requires (Article 10(1)) information on the **technical steps to conclude the contract**, whether the **contract will be filed and made accessible** by the trader, the technical means for **correcting input errors** and the **languages offered**.

The Services Directive additionally requires information about any contract clauses on the **applicable law and competent courts** as well as about **insurance or guarantees**, their territorial coverage and the contact details of the insurer or guarantor.

4.2.1.2. Overlapping information requirements

The Consumer Rights Directive includes similar or more detailed requirements with respect to the **description of the product** (main characteristics, functionality and interoperability of digital content) and **price**. Providing this information in accordance with the Consumer Rights Directive is therefore sufficient to also comply with the requirements of the eCommerce and Service Directives. There is, however, one exception – the eCommerce Directive additionally requires specific **information about promotional offers** (Article 6).

As regards the information requirements referred to in the comparative table in Annex II as 'legal terms', the eCommerce and Services Directives require information about **general conditions and contract terms/ clauses**. Since these requirements are not further specified, they should not impact on the trader's obligation to provide the specific information required by the Consumer Rights Directive (some of which may also form part of the general terms and conditions within the meaning of the eCommerce and Services Directives).

The eCommerce Directive requires this information to be provided in a way that enables the recipient to **store and reproduce** it. This requirement goes beyond the requirements in the Consumer Rights Directive under Article 6(1) and 8(1) on presenting information, which accordingly **prevail in this case** by virtue of Article 6(8).

All three directives require information about any applicable **code of conduct** and **out-of-court complaint and redress mechanisms**. The provision of this information according to the Consumer Rights Directive should suffice to also satisfy the relevant requirement in the eCommerce and Services Directives.

4.2.2. *Further information requirements under eCommerce and Services Directives*

Under Article 6(8) of the Consumer Rights Directive, Member States can impose in their national law additional information requirements in accordance with the Services and eCommerce Directives.

The eCommerce Directive does not provide for the possibility of imposing additional information requirements but Article 22(5) of the Services Directive stipulates that it *'does not prevent Member States from imposing additional information requirements applicable to providers established in their territory'*. Member States can therefore impose on **providers established on their territory** further information requirements that go beyond those laid down in the Consumer Rights Directive and the Services and eCommerce Directives (see also recital 12 of the Consumer Rights Directive).

Imposing additional information requirements under Article 6(8) is one of the regulatory choices, about which the Member States must inform the Commission in accordance with Article 29. The Commission has published this information online¹².

¹²

http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/transposition_list_crd_en.htm

4.2.3. Information requirements in sector-specific legislation

Under Article 3(2)¹³, the Consumer Rights Directive is without prejudice to the application of information requirements under other EU legislation, such as the Data Protection Directive 95/46/EC and the ePrivacy Directive 2002/58/EC, which are particularly relevant in online sales for issues such as information about data processing and data subjects' consent to the tracking and use of personal data supplied.

Furthermore, additional information requirements are set out in the Universal Service [Directive 2002/22/EC](#) for electronic communications services, the Audiovisual Media Services [Directive 2010/13/EU](#) for audiovisual services, [Directive 2009/72/EC](#) for electricity, [Directive 2009/73/EC](#) for natural gas etc.

4.2.4. Exemption of 'day-to-day' transactions

Article 5(3) allows Member States to not apply the pre-contractual information requirements under Article 5(1) to on-premises contracts ***'which involve day-to-day transactions and which are performed immediately at the time of their conclusion.'***

By their nature, these transactions are likely to be for low cost items. One obvious example should be *'the supply of foodstuffs, beverages or other goods intended for current consumption in the household'*, referred to in Article 3(3)(j) (which completely exempts these goods from the requirements of the Directive if they are supplied by a trader on frequent and regular rounds to the consumer's home or work place – see also point 2.4.3).

Furthermore, Article 5(3) may also apply to certain services and not only to goods. When this exemption is applied, the second criterion mentioned in Article 5(3), i.e., the requirement for the contract to be performed immediately at the time of its conclusion, should also be met.

- *Examples of such possible day-to-day services are: shoe cleaning services provided on the street and cinema services where the ticket is purchased (i.e., where the contract is concluded) immediately before the film is watched.*

4.2.5. The binding nature of pre-contractual information

Article 6(5) states the following with regard to the binding nature of pre-contractual information to be provided under Article 6(1): *'5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.'*

Accordingly, the information provided on the trader's website should be binding on the parties and, if the trader wishes to alter any of its elements, he should obtain the consumer's express consent:

- *For example, the parties could expressly agree, by exchanging e-mails, on a different time of delivery of the goods than the one specified on the trader's website;*

¹³ *'If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.'*

- *However, a provision in the general terms and conditions stating that the trader may derogate from the information provided on the website would not comply with the requirement for express agreement of the parties.*

The provisions under Article 6(5) would not apply to any changes made by the trader to the terms of the contract after the contract has been concluded. The Unfair Contract Terms Directive 93/13/EEC¹⁴ would be relevant regarding such changes.

4.2.6. *Additional language requirements*

Under Article 6(7) Member States may impose language requirements regarding the **contractual information** in off-premises / distance contracts. If this regulatory choice has been exercised, the relevant requirements, for example, to provide the information in the national language of the Member State concerned would apply to online traders subject to the provisions of Regulation 593/2008 on the law applicable to contractual obligations (Rome I Regulation).

According to its Article 6, if the trader carries out his activities in the country of the consumer's habitual residence or if **he directs such activities** to that country or to several countries including that country, the law applicable to the contract is that of the country in which the consumer is habitually resident. If the parties have chosen a different law, that choice cannot deprive the consumer of the protection afforded by the mandatory provisions of the consumer's country of residence.

Therefore, if the trader's website is directed at the consumers in a Member State that has imposed language requirements under Article 6(7) of the Directive, the trader should provide the consumer with contractual information in the language required by that Member State.

The concept of 'directing' one's commercial or professional activities to the country of the consumer was addressed by the Court of Justice in joined cases [C-585/08 and C-144/09](#) *Peter Pammer and Hotel Alpenhof GesmbH*. This judgment sets out a number of criteria for establishing whether a website is 'directed' at a specific Member State, such as the use of different languages or currencies on the website (see paragraphs 92 and 93 in particular).

4.2.7. *Burden of proof*

Since the trader's failure to provide specific pieces of information required by the Directive, leads to various contractual sanctions provided under the Directive (in addition to sanctions that may apply under national laws), Article 6(9) contained a very important provision, which stipulates that '*As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader*'.

Without excluding the possibility of proving facts by other means, the trader's case would clearly become weaker if the required information is missing from the confirmation of the contract on a durable medium, which under Article 7(1)-(2) or 8(7) (discussed in Chapter 5) always has to include the information provided for in Article 6(1) unless already provided before on a durable medium.

¹⁴ [Council Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts

4.3. Common requirements for on-premises and distance / off-premises contracts

4.3.1. Main characteristics

Article 5(1)(a) and 6(1)(a)

'the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services'

Although this information requirement expressly refers to 'goods and services', by virtue of Article 5(2) and 6(2) it should also apply to public utilities and online digital content.

This information requirement is identical to the one in Article 7(4)(a) of the UCPD. The existing 2009 [Guidance on the UCPD](#) (p. 49-52) explains that the detail of the information to be provided depends on the complexity of the product and highlights the importance of explaining any restrictive conditions concerning the offer, such as very limited period during which a service is provided.

4.3.2. Identity and contact details

Article 5(1)

(b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;

Article 6(1)

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

(c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;

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

As regards the requirements for **on-premises contracts** under Article 5(1)(b), the [Guidance on the UCPD](#) (p. 50) explains that the address of a shop or restaurant that the consumer is already in constitutes an obvious example of such information being apparent from the context.

4.3.2.1. Place of establishment

The concept of 'establishment' in this information requirement is the same as the one used, for example, in the Services Directive 2006/123/EC where it is defined (Article 4) as *'the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out'*. Recital 37 explains that *'[...] Where a provider has several*

places of establishment, it is important to determine the place of establishment from which the actual service concerned is provided [...]'.

The same approach can be used to determine the place whose geographical address should be provided under this Directive. Since the information about the 'geographical' address is required, it should refer to a physical location:

- *For example, it is not sufficient to merely provide the PO Box number as the trader's address.*

4.3.2.2. Place of business

The 'place of business' should mean the place where the essential decisions concerning the trader's general management are taken and where the functions of its central administration are carried out (see, for example, the judgment of the Court of Justice in Case [C-73/06 Planzer](#), paragraph 61: '*Determination of a company's place of business requires a series of factors to be taken into consideration, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is determined. Other factors, such as the place of residence of the main directors, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the company's financial, and particularly banking, transactions mainly take place, may also need to be taken into account.*').

4.3.2.3. Other contact details

The term 'where available' in Article 6(1)(c) should be interpreted as applicable to **all three means of distance communication mentioned in this provision, i.e. telephone, fax and e-mail**.

The purpose of providing these means of communication is to enable the consumer to contact the trader quickly and efficiently. This implies that arrangements should be made to ensure, for example, that telephone calls are answered during office hours and that e-mail and fax communications are answered promptly. Furthermore, the Services Directive (Article 27(2)) requires Member States to '*take the general measures necessary to ensure that providers respond to the complaints referred to in the first subparagraph in the shortest possible time and make their best efforts to find a satisfactory solution.*'

In general, traders should at least provide the details of those means of distance communication that they use for marketing activities. For example, traders who conclude contracts over the telephone should provide their telephone details. Furthermore, under the Consumer Rights Directive, traders should provide those details of the means of distance communication that they are obliged to provide under other relevant EU law.

In particular, regarding the **e-mail address**, Article 5(1)(c) of the eCommerce Directive 2000/31/EC requires '*the details of the service provider, including his **electronic mail address**, which allow him to be contacted rapidly and communicated with in a direct and effective manner*'.

In addition, Article 27(1) of the Services Directive requires Member States to *'take the general measures necessary to ensure that providers supply contact details, **in particular a postal address, fax number or e-mail address and telephone number** to which all recipients, including those resident in another Member State, can send a complaint or a request for information about the service provided'*.

- *For example, online traders who are subject to the eCommerce Directive¹⁵, should provide their **e-mail address** both under the eCommerce and Consumer Rights Directives;*
- *In contrast, traders selling through mail order or by telephone (which are not 'electronic means' for the purposes of Directive 98/34/EC and therefore not subject to the eCommerce Directive), should not have to provide **e-mail addresses** if they do not use these to communicate with their consumers. However, these traders should provide **either an e-mail address or fax number** if they fall under the scope of the Services Directive.*

The eCommerce Directive does not require information about the **telephone number**¹⁶ but this information is required by the Services Directive for sending complaints or requests for information about the service provided.

4.3.2.4. Identity and address of the principal

In off-premises / distance contracts the Directive requires the trader, who acts on behalf of another trader, to indicate also the identity and geographical address of **the principal**.

- *In particular, where the trader provides an on-line trading platform for other traders to market their products, for example, an app store for selling digital content offered by different developers, the platform provider should make sure, through appropriate arrangements with the developers, that information about them as content providers is duly displayed.*

¹⁵ eCommerce Directive applies to **providers of 'information society services'** that are defined in Article 1(2) of Directive [98/34/EC](#) (as amended) as services *'normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'*.

¹⁶ In case C-298/07, *Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV*, the Court of Justice ruled that Article 5(1)(c) of the eCommerce Directive must be interpreted as meaning that *'a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its electronic mail address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. **That information does not necessarily have to be a telephone number.** That information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the internet, to whom the service provider replies by electronic mail except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic, means of communication.'*

4.3.3. Price

Article 5(1)

(c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

Article 6(1)

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

The underlined parts of Article 6(1)(e) represent the additional requirements for pricing information applicable only to distance / off-premises contracts compared to those in Article 5(1)(c) for on-premises contracts. In particular, for distance / off-premises contracts specific information is required for **subscriptions and contracts of indeterminate duration**.

If the product (or one of the products) provided under a contract of indeterminate duration or under a subscription is charged at a fixed rate, information about the total cost per billing period **and** about the total monthly costs should be provided.

- *For example, Internet or pay-TV subscriptions are typically charged at a fixed rate per month/bi-monthly/quarterly irrespective of usage. Therefore, the monthly cost and, if the billing period is different, the costs per billing period would have to be provided to the consumer who wishes to conclude a subscription online or off-premises.*

If a contract covers or includes a product for which the total cost cannot be calculated in advance, the trader should inform the consumer of the way, in which these variable costs are calculated:

- *For example, for voice telephony services whose cost depends on actual usage, the trader should refer the consumer to a detailed price list for telephone calls.*

Note that, under Article 6(6) for off-premises and distance contracts, the consumer does not have to bear any additional charges or costs of which he has not been informed by the trader.

4.3.4. Arrangements for executing the contract – payment and delivery

Article 5(1)

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

Article 6(1)

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

This information requirement is similar for on-premises and off-premises/ distance contracts with the exception that for **on-premises contracts**, all the relevant information should be provided only 'where applicable' whereas for **off-premises/ distance contracts** it should be provided in all cases, except for information on the trader's complaint handling policy, which is only required 'where applicable'.

This information requirement is similar to the one under Article 7(4)(d) of the UCPD. However, as is explained in the existing [Guidance on the UCPD](#) (p. 50-51), under the UCPD information about the terms of payment, delivery, performance and handling of complaints must be stated explicitly only when it is to the consumer's disadvantage when compared to diligent market practice.

In the recent **Roadmap¹⁷ on the single market for parcel delivery**, the Commission invited retailers, amongst others, to provide information on all relevant features of the different delivery options, notably concerning the delivery period, any tracking possibilities, different options for last-mile delivery, delivery services used and prices for the different options.

4.3.4.1. Time of delivery or performance

The trader would also satisfy the requirements of Article 5(1)(d) / 6(1)(g) regarding the time of delivery or performance if he indicates a **period (such as '10 days' or 'two weeks') from the conclusion of the contract** (placing of the order by the consumer). The trader does not necessarily have to indicate a specific calendar date, as this may not always be practically feasible.

For **on-premises contracts**, the information about the time by which the trader undertakes to deliver the goods or to perform the service would not be applicable if the **delivery or performance takes place immediately**.

For **on-premises sales contracts**, the requirement to indicate the time of delivery should be interpreted in light of Article 18. Namely, the trader should not have to inform about the time

¹⁷ Communication from the Commission "A roadmap for completing the single market for parcel delivery - Build trust in delivery services and encourage online sales", Brussels, 16.12.2013, [COM\(2013\) 886 final](#)

of delivery of goods if intending to deliver them within the **default time limit of 30 days specified in Article 18**. Of course, this does not prevent the trader from communicating to the consumer a (shorter) time for delivery or the trader and consumer from agreeing on a different date. The agreed date would then constitute the 'agreed' time of delivery, as referred to in Article 18 (see also Chapter 7 on delivery).

4.3.4.2. Arrangements for payment

Examples of **arrangements for payment** that should be particularly clearly explained to the consumer are:

- *Payment via the consumer's telephone bill;*
- *In subscription contracts, such as for online video games, the arrangement whereby the trader uses the information about the means of payment (such as credit card details) provided by the consumer at the time of initial subscription also for billing subsequent purchases without prompting the consumer to re-enter this information.*

Payments are subject to the Payment Services Directive 2007/64/EC (see also Chapter 9 concerning Article 19 on the fees for the use of means of payment). Its Article 54(1) requires the payer's consent as follows: '*1. Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction*'.

4.3.5. *Guarantees and after-sales services*

Article 5(1)

(e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;

Article 6(1)

(l) a reminder of the existence of a legal guarantee of conformity for goods;

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

Although presented slightly differently, the on-premises and off-premises / distance contracts are subject to practically identical requirements regarding information on the **legal guarantee and after-sales services**. Although the information on the former is mandatory, the latter should only to be provided if the respective additional benefits are actually offered.

Under the obligation to remind the consumer of the **legal guarantee**, the seller should specify that, under EU law, he is liable for any lack of conformity that becomes apparent within a

minimum of two years from delivery of the goods and that national laws may give the consumer additional rights.

Note that the UCPD prohibits 'presenting rights given to consumers in law as a distinctive feature of the trader's offer' (see Article 6(1)(g) and point 10 of Annex I).

For off-premises / distance contracts a specific reference is made to '*after sale customer assistance*' which, although not expressly mentioned in Article 5(1)(e) concerning on-premises contracts, would normally be covered by the wider notion of 'after-sales services'. The information about the after-sales services should in particular explain where the service will be carried out and who bears the cost of transport (if applicable).

4.4. Duration and termination of the contract

Article 5(1)(f) and 6(1)(o)

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

Article 6(1)

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

Information about the conditions for terminating a contract of indeterminate duration or a contract that is extended automatically (required for both on-premises and off-premises/distance contracts) should in particular include information about:

- Applicable charges;
- Termination procedures, in particular the prior notice period and the means by which the termination should be notified (e.g., e-mail or postal address)

For distance and off-premises contracts Article 6(1)(p) additionally requires information about the minimum duration of the consumer's obligations, i.e., the minimum time period for which the consumer is expected to pay on the basis of the terms and conditions offered by the trader:

- *For example a mobile telephony contract of 24 months may include a minimum duration of 6 months that must be paid for in case of early termination.*

Any such minimum period during which terminating the contract is not allowed, should also be treated as one of the **major conditions for terminating the contract** of indeterminate duration or an automatically extended contract in the sense of Article 5(1)(f). Therefore, information about the minimum duration should be provided also for contracts of indeterminate duration and automatically extended contracts, which are concluded on-premises and are subject to Article 5(1)(f).

4.5. Additional requirements for off-premises and distance contracts

4.5.1. Cost of using distance means of communication

Article 6(1)

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

This information requirement is unchanged as compared to the one under the replaced Distance Selling Directive (Article 4(1)(g)). It would in particular apply in cases where the trader advertises a Premium Rate Services (PRS) number that the consumer must call in order to conclude the contract for the offered goods or services.

4.5.2. Deposits and financial guarantees

Article 6(1)

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

Deposits and financial guarantees are typical in rental contracts involving putting an object of value at the consumer's disposal, such as car rental. As explained in recital 33: *'The trader should be obliged to inform the consumer in advance of any arrangement resulting in the consumer paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumer's credit or debit card.'*

- *For example, the information on the conditions of the guarantee should in particular explain whether the amount in question will be blocked or debited from the consumer's account and when and under what conditions it will be unblocked or reimbursed to the consumer.*

4.5.3. Out-of-court redress mechanisms

Article 6(1)

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

The requirements regarding the functioning of out-of-court complaint and redress mechanisms falling under this information requirement are set out in Directive 2013/11/EU on alternative dispute resolution for consumer disputes (Directive on consumer ADR). That Directive requires Member States to set up an ADR infrastructure by 9 July 2015, so that disputes involving a trader established in a Member State can be submitted to an ADR entity, which offers independent, impartial, transparent, effective, fast and fair ADR.

5. SPECIAL REQUIREMENTS FOR DISTANCE CONTRACTS

5.1. Definition of a distance contract

Article 2 defines distance contracts as follows: '(7) *'distance contract' means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.*

Recital 20 provides further explanations of this concept, including examples of means of distance communication: *'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 the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax) up to and including the time at which the contract is concluded. That definition should also cover situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. By contrast, a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract. Neither should a contract initiated by means of distance communication, but finally concluded at the business premises of the trader be considered a distance contract. Similarly, the concept of distance contract should not include reservations made by a consumer through a means of distance communications to request the provision of a service from a professional, such as in the case of a consumer phoning to request an appointment with a hairdresser. [...]*'

In concluding a distance contract, the parties may also use **a combination of several different means of distance communication** (e.g. website and phone). The fact that parties meet each other after concluding the distance contract, typically at the time of delivery or payment, should not change the classification of a contract as a distance contract. If the consumer has merely visited the business premises to gather information about the goods or services, the contract that he subsequently negotiates and concludes with the trader at a distance should be considered a distance contract. Although simply taking of an appointment with the trader is not considered a distance contract, a binding reservation made, for example, by telephone of goods to be collected or services to be received at a certain time is likely to constitute a distance contract for the purposes of the Directive.

The Directive only applies to distance contracts concluded under **an organised distance sales or service-provision scheme**. For example, if a trader only exceptionally concludes a contract with a consumer by e-mail or telephone, after being contacted by the consumer, such a contract should not be considered a distance contract under the Directive.

The trader may use an online platform for the conclusion of contracts subject to the Directive. As explained in Recital 20: *'[...] The notion of an organised distance sales or service-provision scheme should include those schemes offered by a third party other than the trader*

but used by the trader, such as an online platform. It should not, however, cover cases where websites merely offer information on the trader, his goods and/or services and his contact details.'

Under Article 2(2) 'trader' is broadly defined as '*any natural person or any legal person, [...], who is acting, **including through any other person acting in his name or on his behalf**, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive.'* When a trader uses an online platform to market his products and conclude contracts with consumers, the provider of that platform shares, in so far as he is acting in the name of or on behalf of that trader, the responsibility for ensuring compliance with the Directive.

5.2. Pre-contractual information

5.2.1. Additional requirements for presenting certain pre-contractual information

Article 8

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

Article 8(2) stipulates additional pre-contractual information requirements for contracts that are concluded by electronic means and are offered against payment of a price.

The Directive does not define 'electronic means' but, in view of the explanation provided in Recital 39, this term should be interpreted as referring to **contracts concluded through websites**: '*It is important to ensure for distance contracts concluded through websites that the consumer is able to fully read and understand the main elements of the contract before placing his order. To that end, provision should be made in this Directive for those elements to be displayed in the close vicinity of the confirmation requested for placing the order [...]*'. Furthermore, in view of the definition of 'electronic means' in Directive [98/34/EC](#)¹⁸, Article 8(2) can also apply to other technologies, such as digital content provided via TV set-top boxes.

Article 8(2) should be seen in the context of national rules transposing the provisions of the eCommerce Directive 2000/31/EC on the formation of contracts, which apply if the contract falls under the definition of an 'information society service', i.e., any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

¹⁸ Article 1(2): '**by electronic means**' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means'.

Article 8(9) of the Consumer Rights Directive expressly confirms that it is without prejudice to the provisions laid down in Articles 9 and 11 of Directive 2000/31/EC, whereby the trader is required **to allow the consumer to verify the e-order before placing it**.

Accordingly, Article 8(2) of the Directive would in practice apply at the moment in which the consumer is asked to verify the order in line with the eCommerce Directive, i.e. to check the contents of the shopping basket before clicking on the 'buy' button.

The terms 'directly before' in Article 8(2) should cover, firstly, the **temporal aspect** and should be construed as meaning 'immediately before'. Furthermore, the terms 'prominent manner' and 'close vicinity' in Recital 39 suggest stronger requirements on **presenting information** compared to the general requirements under Article 6(1) and 8(1). The information should be presented in a way that the consumer can actually see and read it before placing the order without being obliged to navigate away from the page used to place the order.

The specific pre-contractual information requirements referred to in Article 8(2) are:

- (1) the main characteristics (Article 6(1)(a));
- (2) the total price (Article 6(1)(e));
- (3) the duration of the contract and the conditions for terminating it (Article 6(1)(o));
- (4) where applicable, the minimum duration of the contract (Article 6(1)(p)).

5.2.2. Requirements for the order confirmation button

Article 8

2.[...]

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

The second subparagraph of Article 8(2) requires that the button used to place the order on the website is clearly labelled. This label can be designed in different ways as long as it gives a clear message about the obligation to pay:

- *For example, terms such as 'buy now', 'pay now' or 'confirm purchase' would convey the message required by this provision;*
- *On the contrary, phrases such as 'register', 'confirm' or 'order now' as well as unnecessarily long phrases that may effectively conceal the message about the obligation to pay, are less likely to meet this requirement.*

This requirement should also apply if the trader has designed the presentation of pre-contractual information to the consumer according to Article 8(4).

5.2.3. *Contracts concluded over means of distance communication with limited space or time*

Article 8(4) deals with means of distance communication allowing limited time or space to display the information:

Article 8

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

Accordingly, Article 8(4) includes the same information requirements as Article 8(2), to which it adds information about:

- (1) the identity of the trader as referred to in Article 6(1)(b);
- (2) the right of withdrawal as referred to in Article 6(1)(h), i.e., information about the conditions, time limit and procedures for exercising this right as well as the model withdrawal form set out in Annex I(B) of the Directive.

Article 8(4) does not include the requirement under Article 6(1)(p) to provide information about *'the minimum duration of the consumer's obligations under the contract'*. However, as is explained earlier in Chapter 4, any such minimum period is also one of the major conditions for terminating a contract of indeterminate duration or an automatically extended contract under Article 6(1)(o). Therefore, in practice, this information element should also be covered by Article 8(4).

Article 8(4) should apply primarily to contracts concluded using technologies such as SMS, which impose technical limits on the amount of information that can be sent.

Furthermore, it also identifies the information that should be provided if the trader has customised the content and presentation of his trading website for mobile devices with small screens. In these cases, the trader can limit the information displayed on the user's screen to that required under Article 8(4), where appropriate in an expandable format, without obliging the consumer to navigate away from the page being used to place the order.

The rest of the pre-contractual information required under Article 6(1) could in this case be available via hyperlink (see also recital 36, which refers to *'providing a toll free telephone*

number or a hypertext link to a webpage' in the case of distance contracts concluded through means of distance communication with technical constraints).

5.3. Contracts concluded by telephone

Article 8

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

Article 8(5) contains a special rule for contracts concluded by telephone requiring that the trader's identity and the commercial purpose of the call are made clear at the beginning of the conversation. Since this rule is '*without prejudice to paragraph 4*', **traders may limit the information provided during the telephone call in accordance with Article 8(4)**.

Since in this case it would be practically impossible to provide **the model withdrawal form** required by Article 6(1)(h) in a written form, the contents of the form should be explained to the consumer orally. After the contract is concluded, the model withdrawal form should be included in the confirmation of the contract provided on a durable medium according to Article 8(7).

Article 8

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

Article 8(6) contains another regulatory choice available to Member States. Some Member States have used this regulatory choice in a more limited way, i.e., they applied the respective additional requirements only to contracts concluded by telephone call initiated by the trader.

'Durable medium' in this provision refers to paper and other durable media as explained in Recital 23: '*Durable media should enable the consumer to store the information for as long as it is necessary for him to protect his interests stemming from his relationship with the trader. Such media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.*' Therefore, Member States may require that both the trader's confirmation of the offer and the consumer's consent be on a durable medium, which is not necessarily on paper and may be, for example, in an e-mail exchange.

5.4. Confirmation of the contract

Article 8

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

- (a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and*
- (b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.*

The trader should provide the consumer with a confirmation of the contract including all the information required under Article 6(1) unless this has already been provided on a durable medium, such as in a mail order catalogue, SMS or e-mail, before the contract was concluded.

The definition of a 'durable medium' was examined by the Court of Justice in case [C-49/11 Content Services Ltd](#) concerning the Distance Selling Directive 97/7/EC, which also required confirmation of a distance contract on a durable medium in Article 5(1). According to the Court's ruling, a mere provision of information on a website does not constitute durable medium: '*Article 5(1) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts must be interpreted as meaning that a business practice consisting of making the information referred to in that provision accessible to the consumer only via a hyperlink on a website of the undertaking concerned does not meet the requirements of that provision, since that information is neither 'given' by that undertaking nor 'received' by the consumer, within the meaning of that provision, and a website such as that at issue in the main proceedings cannot be regarded as a 'durable medium' within the meaning of Article 5(1).'*'

At the same time, the Court did not exclude the possibility for certain websites to qualify as durable media if they met the requirements: "*46. There is nothing in the file to indicate that the seller's website, to which the link sent to the consumer connects, allows that consumer to store information which is personally addressed to him in such a way that he can access it and reproduce it unchanged during an adequate period without the seller being able to amend the content unilaterally.*"

Accordingly, a customer's private account on the trader's website where the trader uploads the information addressed to the consumer and cannot remove and change it unilaterally, could be considered a durable medium for the purposes of the Directive. If such an account is the trader's only way of providing contract confirmation, its **continued accessibility to the consumer** should be ensured for an adequate period also after the consumer's contract with the trader is terminated.

The trader should remain subject to the obligation under Article 8(7) to provide the confirmation of the contract on a durable medium also if pre-contractual information was provided to the consumer in accordance with Article 8(4).

As regards the **timing of the confirmation** Article 8(7) requires it to be sent '*within a reasonable time after the conclusion of the distance contract*'. In addition, the confirmation has to be provided at the latest at the time of the delivery of the goods or before the performance of the service begins.

For **services**, there is no requirement to provide the confirmation before the end of the withdrawal period (if the performance of the contract starts after this period ends). However, the requirement for the confirmation to be sent within a 'reasonable time' implies that it should be sent early enough to allow the consumer to exercise the right of withdrawal. Whether a belated confirmation should be regarded as unreasonable in the sense of Article 8(7) would have to be decided on a case-by-case basis.

There is no explicit absolute deadline for the confirmation of contracts for the **supply of public utilities and contracts for online digital content**. By way of analogy, the rules on service contracts should apply to these contracts, i.e., the confirmation should be provided at the latest before the performance of the contract begins. This analogy seems to be reinforced by the common rules under the Directive regarding the calculation of the right of withdrawal period for these contracts in accordance with Article 9(2)(a) and (c).

Contracts for **online digital content** are usually performed immediately, i.e., before the right of withdrawal period expires, and the most common means of confirmation is e-mail. In this context a relevant question to ask is whether the traders concerned have to ensure that the consumer actually receives the confirmation by e-mail before the download or streaming of the digital content begins, or whether it is enough that the trader sends such an e-mail before performance of the contract starts.

It should be noted here that Article 8(7) does not refer to 'reception' of the confirmation by the consumer; instead it requires the trader to 'provide' it. The meaning of the terms 'provide' and 'receive' in the context of the Distance Selling Directive 97/7/EC was considered by the Court of Justice in case [C-49/11 Content Services Ltd](#), mentioned above. Article 5(1) of the Distance Selling Directive states that the consumer must **receive** confirmation in writing or on another durable medium available and accessible to him in good time unless the information has already been **given** to him prior to conclusion of the contract in writing or on another durable medium.

The Court noted in its judgment that the notions of 'given' and 'received' are different from the term 'provided', which are used in other provisions of the Directive and which the Court regarded as a 'neutral' formulation: '*35. It should also be noted in that regard that, whereas the European Union legislature opted, in Article 4(1) of Directive 97/7, in the vast majority of the linguistic versions, for a neutral formulation, according to which the consumer is to be 'provided' with the relevant information, it chose, by contrast, a term with greater*

implications for the business in Article 5(1) of that directive, according to which the consumer must 'receive' confirmation of that information. [...]

It should also be acknowledged that the trader is not in control of the confirmation e-mail's transmission process. In light of this, the requirements of Article 8(7) are met if the confirmation e-mail is sent **immediately before** the digital content is supplied, i.e., before the streaming or download starts.

6. THE RIGHT OF WITHDRAWAL

6.1. Calculation of the right of withdrawal period

6.1.1. Introduction

Article 9

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.

Article 9 gives the consumer **14 days to withdraw** from a distance or off-premises contract without giving any reason. Article 10 provides for an **extension of the right of withdrawal period** if the trader has not provided all the information required in Article 6(1)(h), namely information about the conditions, time limit and procedures for exercising the right of withdrawal or the model withdrawal form set out in Annex I(B).

Recital 41 specifies that '*[...] all periods contained in this Directive should be understood to be expressed in **calendar days**. Where a period expressed in days is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place should not be considered as falling within the period in question.*'

Accordingly, '14 days' in this provision should mean 14 calendar days starting from the day following the day on which the relevant event occurs (i.e., the conclusion of the contract or delivery of goods):

- *For example, if the goods are delivered or the service contract is concluded on March 1st, the last day to exercise the right of withdrawal should be March 15th.*

Recital 41 points out that [Council Regulation No 1182/71](#)¹⁹ applies to the Directive. According to this Regulation (Article 3(3)): '*The periods concerned shall include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days.*'

So public holidays, Sundays and Saturdays are **included** in the 14 days.

¹⁹ [Council Regulation No 1182/71](#) of 3 June 1971 determining the rules applicable to periods, dates and time limits

However, if the withdrawal period **ends** on one of these days, it should be extended to the next working day because Article 3(4) of the Regulation states that: *'Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the **period shall end with the expiry of the last hour of the following working day.**'*

The lists of days designated as public holidays by Member States for the purposes of Regulation 1182/71 are published in the OJ²⁰.

- *For example, if the 14-day right of withdrawal period for a contract concluded with a British consumer ends on 25th December 2014, it should be extended until 27th December because the 25th and 26th December are designated as public holidays in the United Kingdom in 2014.*

Although traders should accept the consumer's right to withdraw from the contract during the extended withdrawal period, they have no express obligation to inform the consumer that an extension is possible (see also the 'Model instructions on withdrawal' annexed to the Directive).

6.1.2. Starting point of the withdrawal period

Article 9

2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:

- (a) *in the case of service contracts, the day of the conclusion of the contract;*
- (b) *in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:*
 - (i) *in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;*
 - (ii) *in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;*
 - (iii) *in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;*
- (c) *in the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.*

²⁰ For example, the list for 2014 is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:378:0029:0030:EN:PDF>

The day from which the 14-day right of withdrawal period is calculated depends on whether the contract is a sales contract, a service contract, a contract for online digital content or a contract for the supply of public utilities. The Directive provides for two starting points:

- the day of the conclusion of the contract – for service contracts, contracts for the supply of public utilities and contracts for online digital content;
- the day of taking physical possession of goods (delivery) – for sales contracts but subject to several special rules for: (1) multiple goods ordered in one order and delivered separately; (2) goods consisting of multiple lots or pieces and delivered separately; and (3) contracts for regular delivery of goods during defined period of time.

For goods that are delivered, the withdrawal period begins the day after they reach the consumer or another person indicated by the consumer, other than a carrier (Article 9(2)(b)). This differs from Article 20, which provides for the risk to pass to the consumer as soon as the goods are delivered to the carrier if the carrier was commissioned by the consumer and not offered by the trader.

If there is more than one delivery, the withdrawal period begins the day after delivery of **the last of the goods ordered in a single order but delivered separately** (Article 9(2)(b)(i)). This rule is justified by the consumer's legitimate interest in receiving all parts of a single order before deciding whether to withdraw from the contract, for example, for:

- *a main good and accessories, such as a camera and lens, or*
- *clothing such as a jacket and trousers, which were ordered together and intended to be worn together.*

In such cases, a single withdrawal period should apply from the day after delivery of the last good.

As stated in recital 40: '*[...] the consumer should be able to exercise the right to withdraw before acquiring physical possession of the goods*'. Moreover, nothing prevents the consumer from refusing to take possession of the goods in this case:

- *For example, after ordering an item from trader X the consumer finds a better offer for the same item from trader Y; the consumer therefore notifies trader X of the exercise of the right of withdrawal and does not pick up the item at the post office.*

6.2. Information about the right of withdrawal

Article 6(1) requires traders to provide certain information about the right of withdrawal from off-premises and distance contracts.

Article 6(1)

(h) where a right of withdrawal exists, the conditions, time limit and procedures for

exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);

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

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

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

Under Article 6(1), the information must be clear and comprehensible. Under Article 6(4), the trader may use the model instructions on withdrawal set out in **Annex I(A)** of the Directive to provide the information referred to in points (h), (i) and (j). If the information is filled in correctly and given to the consumer, the trader has met these information requirements.

However, these **model instructions on withdrawal** in Annex I(A) **are not mandatory** and the trader may adjust their wording, for example, using the terms 'I / me' instead of 'we/ us' if the trader is an individual entrepreneur or displaying the trader's identity and contact details in the header of the form and referring to these details in the text.

By contrast, if the right of withdrawal under Article 6(1)(h) applies, the trader should always provide the consumer with the **model withdrawal form** set out in Annex I(B), even if the trader **also** gives the consumer the option of filling in and sending a form on its website about the right of withdrawal, in line with Article 11(3).

The additional online form may be **different from the model withdrawal form**. But if the trader wishes to use a different online form to collect more information from the consumer, such as the reasons for the withdrawal, any other questions of this kind should be presented separately and it should be possible to send the form without answering them.

When giving information on time limits under Article 6(1)(h) for withdrawal from sales contracts under Article 9 (except for contracts for regular delivery of goods), if the exact mode of delivery (single or multiple) is not known in advance, the trader may inform the consumer that the withdrawal period will expire after 14 days from the day after the consumer acquires, or a third party indicated by the consumer, other than carrier, acquires **physical possession of the last good or lot of the order**.

Where one of the **exceptions from the right of withdrawal** provided in Article 16 applies, the consumer should be informed about the exception under Article 6(1)(k).

Where one of the unconditional exceptions applies, only the information required under Article 6(1)(k) should be provided, not the information about the right of withdrawal under Article 6(1)(h) and (i):

- *For example, for products such as milk and meat, covered by the exception in Article 16(d), only the information required by Article 6(1)(k) is relevant, i.e. the trader should inform the consumer that there is no right of withdrawal from the contract because these products are liable to deteriorate or expire rapidly.*

By contrast, for exceptions which only apply in certain circumstances, the information required by Article 6(1)(k) should be provided **in addition** to the information required under Article 6(1)(h) and (j):

- *For example, for canned food which is sealed within the meaning of Article 16(e), the trader should inform the consumer of the conditions, time limits, etc. for withdrawal as required under Article 6(1)(h). The trader should also inform the consumer that, for health protection and hygiene reasons, the consumer loses the right of withdrawal if the cans are opened.*

Article 6(1)(i) requires the trader to state **the cost of returning the goods** that cannot normally be returned by post:

- *For example, this applies to bulky items, such as furniture and large equipment (fridges, washing machines etc.), which are typically delivered door-to-door rather than handed in for dispatch at a post office.*

Recital 36 explains that this information requirement is met, for example, if the trader specifies one carrier (for instance the carrier assigned to deliver the good) and one price for returning the goods.

Recital 36 also states that '*where the cost of returning the goods cannot reasonably be calculated in advance by the trader, for example because the trader does not offer to arrange for the return of the goods himself, the trader should provide a statement that such a cost will be payable, and that this cost may be high, **along with a reasonable estimation of the maximum cost, which could be based on the cost of delivery to the consumer***'.

Where the trader offers different delivery methods, the return cost may be estimated based on the cost of the specific delivery method chosen by the consumer:

- *For example, if the delivery is arranged to the consumer's street address, then also the cost of return may be based on the cost of collecting the goods at that street address.*

The obligation to state the return cost or provide an estimate should not require the trader to provide this information for different possible return scenarios (such as returning in assembled form furniture that was delivered unassembled in a package).

6.3. Exercise of the right of withdrawal

Article 11 of the Directive provides that the consumer can withdraw from the contract by either using the model withdrawal form or making any other unequivocal statement. The relevant recital 44 refers to 'returning the goods with a clear statement': *'[...] However, the consumer should remain free to withdraw in his own words, provided that his statement setting out his decision to withdraw from the contract to the trader is unequivocal. A letter, a telephone call or returning the goods with a clear statement could meet this requirement, but the burden of proof of having withdrawn within the time limits fixed in the Directive should be on the consumer. For this reason, it is in the interest of the consumer to make use of a durable medium when communicating his withdrawal to the trader.'*

Accordingly, it should not be possible to withdraw from the contract by simply returning the goods without any explicit statement to this effect. Refusing delivery or not picking the goods up at the post office would not as such count as valid expressions of withdrawal. In this way, the Directive ensures that the trader would not wrongly consider the return of a package as withdrawal, when it has not been delivered to the customer for some technical reason.

On the other hand, the statement used by the consumer to withdraw from the contract does not necessarily have to refer to the 'right of withdrawal' in legal terms:

- *For example, also a statement of 'terminating' or 'retracting' from the contract or using similar words should be considered as sufficiently 'unequivocal' as long as the consumer and the contract in question are identifiable.*

Since the consumer bears the burden of proof regarding the exercise of the right of withdrawal, recital 44 highlights the benefits of using a durable medium in case there is any dispute. Furthermore, evidence of having sent the notification would obviously provide an additional safeguard for the consumer to prove his case:

- *For example, the consumer could keep a copy of the sent e-mail or of the receipt for registered post.*

6.4. Right of withdrawal in respect of goods

6.4.1. Multiple or defective goods

A consumer may want to **partly withdraw** from a contract for multiple goods if wishing to cancel the purchase of only one or some of them.

Although the Directive does not expressly provide for such a right, it also does not prevent the trader and the consumer from agreeing on a partial withdrawal from the contract by returning only an individual good or several goods sold under a single order. For example, where the

goods supplied under the same contract include promotional items, the trader should not be obliged to agree to the return of only those items sold at full price.

The situation would be different if the consumer has not agreed to receive a gift that the trader has nevertheless provided. Such a gift may be treated as unsolicited and so falls under the rules on inertia selling. Article 27 and point 29 of Annex I to the Unfair Commercial Practices Directive 2005/29/EC prohibit '*Demanding immediate or deferred **payment for or the return or safekeeping of products** supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling)*'.

If the consumer has been supplied with a faulty good, which is not in conformity with the contract as provided in the Consumer Sales and Guarantees Directive 1999/44/EC, the consumer should have the choice, within the 14-day period from delivery, of either invoking the remedies under that Directive or withdrawing from the contract.

6.4.2. Return of the goods

Article 14

1. Unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader in accordance with Article 11. The deadline shall be met if the consumer sends back the goods before the period of 14 days has expired.

The consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.

In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, the trader shall at his own expense collect the goods if, by their nature, those goods cannot normally be returned by post.

Article 14(1) requires the consumer to return the goods to the trader by sending them back within 14 days from the day after the consumer notified the trader of withdrawal from the contract. However, as the consumer is responsible for handling the goods and their diminished value during the right of withdrawal period (see also Chapter 6.4.4), it should be in the consumer's natural interest to return them as soon as possible, rather than wait until the deadline expires.

There is an exception for **off-premises contracts**. If the goods have been delivered to the consumer's home at the time of the conclusion of the contract, **the trader has to collect** at his own expense those goods, which 'cannot normally be returned by post'.

This requirement is, accordingly, an exception from the general rule in Article 6(1)(i) requiring traders to **inform the consumer** about the cost of returning goods which 'cannot normally be returned by post' (see Chapter 6.2).

The **direct cost of returning the goods** is paid by the consumer unless the trader has failed to inform the consumer of this requirement under Article 6(1)(i) or has agreed to bear the cost. These two items of information are also included in the Model instructions on withdrawal in Annex I(A), which traders can use to meet their obligation to inform the consumer. The notion of 'direct cost' should exclude any administrative, handling or 'restocking' cost borne by the trader in connection with the return of the goods.

An offer by the trader to '**collect the goods himself**' should bind the consumer only if the trader has also offered to **bear the cost**. If that is not the case and the consumer finds a more cost-efficient and still reliable method of return offered by a recognised service provider, the consumer should not be obliged under the Directive to accept the trader's offer to collect the goods.

6.4.3. *Reimbursement of the payments received from the consumer*

Article 13

1. The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract in accordance with Article 11.

The trader shall carry out the reimbursement referred to in the first subparagraph using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

2. Notwithstanding paragraph 1, the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.

3. Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Article 13(1) requires the trader to carry out the reimbursement without undue delay and by **no later than 14 days** from the day the consumer informs the trader of the decision to withdraw from the contract.

For sales contracts, under Article 13(3), the trader can only **withhold the reimbursement beyond this deadline** until *he has either received the goods or at least evidence has been supplied by the consumer that the goods have been sent back*.

If the goods or the evidence are received after the 14-day period expires, the trader should reimburse the consumer without undue delay. What constitutes "undue delay" must be assessed on a case-by-case basis; however, in normal circumstances it should not take more than a few working days to process the refund.

In allowing the trader to withhold a refund, Article 13(3) clarifies the obligations of consumers and traders. It improves the trader's position compared to the Distance Selling Directive 97/7/EC (DSD), which required the trader to reimburse the consumer as soon as possible and in any case within 30 days, without specifying whether the consumer must send the goods back first (see Article 6(2) DSD).

The concept of '**evidence of having sent back the goods**' is obviously quite important for the application of Article 13(3). In principle, this 'evidence' should be understood as a written statement from an established transport or postal service provider specifying the sender and the recipient.

In principle, this evidence should not necessarily have to involve third party guarantees that the goods in question have been inspected and verified. Such extra services are likely to be expensive and so could discourage the consumer from exercising the right of withdrawal, which is specifically precluded by the Directive (see recital 47: '*[...] The obligations of the consumer in the event of withdrawal should not discourage the consumer from exercising his right of withdrawal*').

Although Article 14(2) entitles the trader to hold the consumer liable for any diminished value of the goods caused by mishandling during the right of withdrawal period, under Article 13(3) the trader must reimburse the consumer after having received evidence that the goods have been sent back.

If the consumer accepts the trader's offer to collect the goods, or the trader has offered to collect them at his expense, the trader should not be able to invoke the right to withhold the refund under Article 13(3). This should provide an additional incentive to the trader to arrange for the return of the goods as soon as possible.

Article 13(1) specifically requires the trader to use **the same means of payment** for the refund as the consumer used for the initial transaction. In particular, the trader should refund the full amount paid by the consumer in the currency of the payment:

- *For example, if the consumer paid by transferring €50 to the trader's bank account, the trader should reimburse the consumer by transferring the same amount back, covering also any fees charged for the latter transfer by the consumer's bank.*
- *However, the trader should not have to cover any bank fees paid by the consumer for the initial payment.*

- *If the consumer's bank account is in one currency but the payment and refund are made in a different currency, the trader should not be responsible for any loss arising from the currency exchange performed by the consumer's bank on the refund.*

Article 13(1) also allows the trader and the consumer to expressly agree on a **different method**, such as reimbursement by bank cheque instead of transfer or in a currency other than the currency of payment, provided that the consumer does not incur any fees as a result of using a different method:

- *For example, if the trader gets the consumer's agreement to accept a refund by bank cheque instead of a bank transfer, the trader should bear any additional costs to the consumer, for example, currency exchange or bank costs, arising from the trader's use of a different payment method.*

Recital 46 states regarding the use of **vouchers**: "*The reimbursement should not be made by voucher unless the consumer has used vouchers for the initial transaction or has expressly accepted them*".

6.4.4. Consumer's liability for mishandling of the goods

Article 14

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall in any event not be liable for diminished value of the goods where the trader has failed to provide notice of the right of withdrawal in accordance with point (h) of Article 6(1).[...]

5. Except as provided for in Article 13(2) and in this Article, the consumer shall not incur any liability as a consequence of the exercise of the right of withdrawal.

As explained in recital 47, the consumers can withdraw from the contract regardless of how the goods have been handled during the withdrawal period: '*Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to establish the nature, characteristics and the functioning of the goods. **In this case the consumer should not lose the right to withdraw but should be liable for any diminished value of the goods.*** [...]'.

However, in these cases Article 14(2) makes the consumer liable '*for **any diminished value** of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods*'. Recital 47 further explains this obligation: '*[...]. In order to establish the nature, characteristics and functioning of the goods, **the consumer should only handle and inspect them in the same manner as he would be allowed to do in a shop.** For example, the consumer should only try on a garment and should not be allowed to wear it. Consequently, the consumer should handle and inspect the goods with due care during the withdrawal period.*'

The diminished value of the goods can consist, in particular, of the cleaning and repairs cost and, if the goods can no longer be sold as new, the objectively justified loss of income for the trader when disposing of the returned good as second-hand good.

Whether the consumer's testing of the goods went beyond what was necessary to establish their nature, characteristics and functioning will have to be assessed on a case-by-case basis in the event of a dispute. The comparison with what the consumer can normally do in a brick-and-mortar shop serves as a good point of reference, for example:

- *Before purchasing audio/video and recording equipment, the consumer would normally be able to test the image or sound quality;*
- *Trying on a garment in a shop would not involve the removal of the manufacturer's tags;*
- *The consumer would not normally be able to practically test household appliances, such as kitchen appliances, the actual use of which unavoidably leaves traces;*
- *The consumer would not be able to configure software on a computer; hence reasonable costs for any resetting of such equipment would also constitute diminished value.*

It should be kept in mind that 'establishing the functioning' of the goods in this context is different from checking that they are fault-free in every respect. If the goods turn out to be faulty in later use, the consumer is protected by the legislation on sales and guarantees (Directive 1999/44/EC).

In principle, the consumer should be able **to open the packaging** to access the goods if similar goods are normally displayed in shops in unpacked condition. Hence damage caused to the packaging by merely opening it is not cause for compensation. However, any protective films applied to the item should only be removed where strictly necessary to test it.

In relation to the right of withdrawal under the replaced Distance Selling Directive 97/7/EC the Court of Justice ruled in case [C-489/07 Pia Messner](#) (paragraph 27) that a national rule **placing on the consumer the onus of proving** that he did not use those goods during the period for withdrawal in a manner which went beyond what was necessary to permit him to

make effective use of his right of withdrawal would adversely affect the efficiency and effectiveness of the right of withdrawal²¹.

The Directive does not regulate the **enforcement of the consumer's liability** for the diminished value of the goods. In particular, it does not say whether this liability merely implies that the trader may bring legal proceedings against the consumer or that the trader may unilaterally charge the consumer for the damage or reduce the amount of any refund due to the consumer in order to compensate for the purported diminished value of the goods.

These issues are therefore subject to the general contract and procedural laws of Member States, as referred to in Article 3(5). For example, Member States may allow traders to reduce the sum refunded for goods returned in order to cover their diminished value due to mishandling during the right of withdrawal period.

Under Article 14(2), the '*consumer is in any event not liable for diminished value of the goods where the trader has failed to provide notice of the right of withdrawal in accordance with point (h) of Article 6(1).*' Another consequence of failing to provide this notice under Article 10 of the Directive is that **the withdrawal period is extended by up to 12 months**. This means, that a consumer may withdraw from the contract after some considerable time, during which he has been effectively using the goods without bearing any liability for the resulting tear and wear.

6.4.5. *Risk when returning the goods to the trader*

The Directive does not regulate who bears the risk for **accidental damage or loss during the return of the goods** when the consumer withdraws from the contract. Therefore, this matter is also subject to national laws, which may, for example, provide that the risk during the return of the goods lies with the consumer once it is transferred to him upon delivery in accordance with Article 20.

In principle, when returning the goods, the consumer should take reasonable care, for example, by choosing an established transport or postal service provider, to ensure that the goods reach the trader and are not damaged in transit.

Where the consumer has **never taken physical possession of the goods**, e.g. by refusing to take delivery, either without any explicit statement or with a statement to the trader about withdrawal from the contract, the trader would continue bearing the risk of loss or damage since no transfer of risk to the consumer will have taken place according to Article 20.

²¹ '27. In that regard, it follows from the last part of recital 14 in the preamble to Directive 97/7 that it is for the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal. That power must, however, be exercised in accordance with the purpose of that directive and, in particular, may not adversely affect the efficiency and effectiveness of the right of withdrawal. Such would, for example, be the case if the amount of compensation, such as that referred to in the previous paragraph, were to appear disproportionate in relation to the purchase price of the goods at issue or also if **the provision of national law were to place on the consumer the onus of proving that he did not use those goods during the period for withdrawal in a manner which went beyond what was necessary to permit him to make effective use of his right of withdrawal.**'

6.5. Withdrawal from the provision of services

6.5.1. Consumer's consent to immediate performance and compensation obligation

Article 14

3. *Where a consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall pay to the trader an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader shall be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.*

Article 7(3) and Article 8(8), which address off-premises and distance contracts, respectively, in identical terms, provide that '*Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer make **an express request.***'

These provisions therefore apply if the consumer wants the service to start during the withdrawal period. However, they should not prevent the trader from actively proposing that the consumer make such a request. At the same time, they should not oblige the trader either to offer this option or to accept the consumer's request.

Article 14(3) allows the consumer to withdraw from the provision of services or public utilities **even after making an express request**. This is also confirmed in recital 50: '*the consumer should benefit from his right of withdrawal even in case he has asked for the provision of services before the end of the withdrawal period.*'

However, in relation to **service contracts**, under Article 16(a), the consumer loses the right of withdrawal '*after the service has been fully performed if the performance has begun with the consumer's **prior express consent**, and with the **acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader***' (Article 16(a)).

The consumer's '*express consent*' in Article 16(a) should be interpreted as the '*express request*' required under Articles 7(3) and 8(8). Where the service contract is of such a nature that it may be fully performed during the withdrawal period, e.g., an installation contract, the trader should also obtain the consumer's acknowledgement about the loss of the right of withdrawal once the contract has been fully performed.

By analogy with the rules on additional payments under Article 22, the terms '*express request/ consent*' in this context should be interpreted as implying **a positive action by the consumer**, such as ticking a box on the website. The use of a pre-ticked box or of a clause in the general terms and conditions for this purpose is not likely to satisfy these requirements.

The consumer's request/ consent and acknowledgement can be expressed in one go. The requirements of Articles 7(3) / 8(8) and 16(a) could be fulfilled, for example, by the following formula:

- *[] I hereby request immediate performance of the service contract and acknowledge that I will lose my right of withdrawal from the contract once the service contract is fully performed.*

The consumer's express request/ consent may also be in the form of an explicit agreement between the parties to execute the contract on or as from a specific date during the withdrawal period.

Where services, such as installation, **are provided under a sales contract**, recital 50 states the following: '*[...] For contracts having as their object both goods and services, the rules provided for in this Directive on the return of goods should apply to the goods aspects and the compensation regime for services should apply to the services aspects*'.

So, if the service is provided during the right of withdrawal period from the sales contract (e.g., immediately upon delivery of the goods), the trader should also obtain the **consumer's express request for the performance of the service** during the right of withdrawal period if he wishes to be compensated for that service in the event that the consumer withdraws from the contract:

- *For example, where the same distance or off-premises sales contract provides for delivery and installation of a household appliance, the consumer could request the trader to install the appliance immediately upon its delivery. However, the consumer would still have a 14-day right of withdrawal period from the day after delivery. If the consumer then decides to withdraw from the contract within this period, the trader would be entitled to compensation for both the installation costs and any diminished value of the appliance.*

If the consumer withdraws from the contract during the right of withdrawal period after requesting its immediate performance, Article 14(3) requires the consumer to pay the trader **an amount which is in proportion** to what has been provided on the basis of the total price agreed:

- *For example, a consumer who withdraws from a contract for mobile telephone services after using the service for 10 days would have to pay the trader one third of the monthly subscription²² plus the price of any additional services received during that period.*

²² See also Article 3(2)(d) of Regulation No 1182/71, which states 'if a period includes parts of months, the month shall, for the purpose of calculating such parts, be considered as having **thirty days**.'

Where the provision of services involves one-off costs to the trader to make them available to the consumer, the trader may include them in the calculation of the compensation:

- *For example, the trader may include the cost of installation works at the consumer's place of residence that are carried out as part of a contract for land-line electronic communication services before the consumer withdraws from the contract.*

However, the compensation should be based on the **market value** of what has been provided if the total price is excessive. Useful explanations of how to determine the market value are provided in recital 50, which states: '*[...] The calculation of the proportionate amount should be based on the price agreed in the contract unless the consumer demonstrates that the total price is itself disproportionate, in which case the amount to be paid shall be calculated on the basis of the market value of the service provided. The market value should be defined by comparing the price of an equivalent service performed by other traders at the time of the conclusion of the contract. [...]*'

Recital 14 refers to the application of Member States' rules 'on excessive or extortionate prices', which may be relevant in applying Article 14(3).

These rules on the right of withdrawal also apply to paid services that are provided by electronic means, for example:

- *subscriptions to internet-based storage of pictures created by the consumer, to social networks or to internet voice/video telephony;*
- *subscriptions to online weather or traffic services;*
- *subscriptions to online newspapers/newsletters (see also the exception from the right of withdrawal under Article 16(j), which applies to the supply of a newspaper but not to newspaper subscriptions).*

6.5.2. Consequences of the trader's failure to comply with the obligations

Article 14

4. The consumer shall bear no cost for:

(a) the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, in full or in part, during the withdrawal period, where:

(i) the trader has failed to provide information in accordance with points (h) or (j) of Article 6(1); or

(ii) the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 7(3) and Article 8(8); [...]

Under Article 14(4)(a) the consumer bears no cost, i.e. the consumer is entitled either to a refund of the amount paid or not to pay at all if the trader has not given the required

information about the right of withdrawal under Article 6(1)(h) or (j) or if the consumer has not expressly requested that the service start during the withdrawal period.

As in the case of goods discussed above, failing to provide this specific information may prove expensive to the trader because, under Article 10, the withdrawal period may be extended by up to 12 months. This means that the consumer may be entitled to cost-free services or public utilities for quite a long time.

6.6. Termination of the contract following the exercise of the right of withdrawal

Article 12

The exercise of the right of withdrawal shall terminate the obligations of the parties:

(a) to perform the distance or off-premises contract; or

(b) to conclude the distance or off-premises contract, in cases where an offer was made by the consumer.

Article 12 states that exercise of the right of withdrawal terminates the parties' obligations to perform the contract, in particular the consumer's obligation to pay or to conclude the contract if the consumer has made the offer.

However, under Article 3(2), this rule does not affect other sector-specific EU rules on terminating contracts.

- *For example, Directive 2009/72/EC on the internal market in electricity²³ and Directive 2009/73/EC on the internal market in gas²⁴ (Article 3(6)) provide that if a customer, while respecting contractual conditions, wishes to change supplier, the operator(s) concerned must make the change within three weeks.*

So, if a consumer decides to withdraw from a contract for electricity or gas and switch to a new provider, the previous supplier and the consumer may continue to be bound by their contract for up to three weeks, in derogation from the rules in Article 14(3) on compensation for what has been provided until withdrawal.

²³ Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Article 3(5):

'Member States shall ensure that:

(a) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and

(b) customers are entitled to receive all relevant consumption data.'

²⁴ Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, Article 3(6):

'Member States shall ensure that:

(a) where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and

(b) customers are entitled to receive all relevant consumption data.'

6.7. Ancillary contracts

Article 15

1. Without prejudice to Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated, without any costs for the consumer, except as provided for in Article 13(2) and in Article 14 of this Directive.

2. The Member States shall lay down detailed rules on the termination of such contracts.

Article 2(15) defines an ancillary contract as: *'a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader'*, for example:

- *a delivery, maintenance or installation contract,*
- *an insurance and credit agreement to finance the purchase.*

Although generally excluded from the scope of application of the Directive by virtue of Article 3(3)(d), any ancillary insurance and credit contracts would be terminated in accordance with Article 15.

The relationship between the separate linked contracts should be assessed to determine which is the main contract and which is ancillary to the main contract:

- *For example, where, through separate contracts with the same trader, a consumer purchases mobile telephony services and a mobile handset that is (partly) paid for in the monthly price for the service, the service contract should be regarded as the main contract. This should not prevent the consumer from withdrawing separately only from the ancillary sales contract while keeping the service contract.*

Where the ancillary contract is subject to the Directive (for example, a contract for delivery or installation), the consumer should compensate the trader for the cost of what has been provided in accordance with Articles 13(2) and 14.

On the other hand, if the ancillary contract is generally outside the scope of the Directive (such as an insurance or credit contract), the consequences of the termination will be subject to the sector-specific or general contract law rules of the Member States.

The detailed rules on the termination of ancillary contracts are to be laid down by Member States. These may include, for example, the trader's obligation to inform any other relevant trader when he is informed by a consumer of the consumer's decision to withdraw from the main contract.

6.8. Exceptions from the right of withdrawal

Article 16 lists 13 contracts/ situations in which the consumer has no right of withdrawal or loses this right under certain conditions. The following situations or contracts deserve particular attention here.

6.8.1. Goods made to the consumer's specifications or clearly personalised

Article 16

(c) the supply of goods made to the consumer's specifications or clearly personalised;

This exception from the right of withdrawal is identical to that provided for in Article 6(3) of the Distance Selling Directive 97/7/EC.

'Goods made to the consumer's specifications' are defined in Article 2 of the Directive as '*non- prefabricated goods made on the basis of an individual choice of or decision by the consumer*'. Recital 49 of the Directive refers to 'tailor-made curtains' as an example of goods made to the consumer's specifications or which are clearly personalised.

Since this rule is an exception from the Directive's more general rule giving consumers the right of withdrawal from distance/off-premises contracts, it should be interpreted narrowly.

So, this exception should cover, for example:

- *goods, for which the consumer has provided specifications, such as measurements for furniture or the size of a fabric;*
- *goods, for which the consumer has requested specific personalised features, such as a particular design for a car that is made to order or a specific component for a computer, which has to be individually procured for that particular order and which was not part of the trader's general offer to the public;*
- *address labels with the consumer's contact information or T-shirts with a personalised print.*

Specification/ personalisation in this context should be taken to mean that the goods are, in principle, unique and produced according to the individual wishes and requirements stated by the consumer and agreed with the trader.

In contrast, where the consumer simply make up the goods by picking from the standard (pre-set) options provided by the trader, such as colour or additional equipment in a car, or makes up a set of furniture on the basis of standard elements, it should not be possible to speak of either 'specification' or 'personalisation' in the narrow sense of this provision.

6.8.2. *Goods with specific characteristics*

Article 16

(d) the supply of goods which are liable to deteriorate or expire rapidly;

(e) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;

(f) the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;

An example of goods liable to deteriorate or expire rapidly referred to in point (d) could be:

- *food and drinks with short expiry time limits, including those to be kept refrigerated.*

For an item to be exempt under point (e), there should be genuine health protection or hygiene reasons for using a seal, which may consist of protective wrapping or film. This exception could apply, for example, to the following goods if unsealed by the consumer after delivery:

- *Cosmetic products such as lipsticks;*
- *Mattresses.*

For other cosmetic products that cannot be considered as being sealed for health protection or hygiene reasons, the trader may give the consumer another way of testing them as in a shop, for example, by including a free tester with the product. That way, the consumers would not need to open the packaging of the product in order to exercise their right to establish the nature and characteristics of the product.

Recital 49 refers to the supply of 'fuel' as an example of goods inseparably mixed with other items.

6.8.3. *Contracts with a specific date or period of performance*

Article 16

(l) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;

For this exception to apply, the contract should stipulate 'a specific date or period of performance'. Again, since this is an exception, it should be interpreted narrowly. It should therefore be applied bearing in mind the reasons given in recital 49: '*[...] The granting of a right of withdrawal to the consumer could also be inappropriate in the case of certain services where **the conclusion of the contract implies the setting aside of capacity** which, if a right of withdrawal were exercised, the trader may find difficult to fill. This would for example be the case where reservations are made at hotels or concerning holiday cottages or cultural or sporting events.'*

Recital 49 gives the following examples of this exception:

- *bookings at hotels, holiday cottages or cultural or sporting events.*
- *other examples include theatre performances on a specific date or catering at a birthday or wedding party on a specific date.*

The term 'car' used in Article 16(1) should be understood as referring to vehicles designed for the **carriage of passengers**²⁵.

Rental of motorbikes and means of transport other than cars on specific dates/ periods could also be exempted from the right of withdrawal as a service 'related to leisure activities'.

In case [C-336/03 easyCar](#) concerning the Distance Selling Directive 97/7/EC the Court of Justice ruled that 'transport' also includes making the means of transport available to the consumer (see paragraphs 26 and 31, in particular). According to that interpretation, the rental of trucks for the carriage of goods on a specific date could fall within the scope of the exception provided in Article 16(1) for the 'transport of goods'.

Although Article 16(1) covers contracts for the transport of goods, it would not apply to storage services, even where they are provided on specific dates.

7. DELIVERY

Article 18

1. Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract.

2. Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer shall call upon him to make the delivery within an additional period of time appropriate to the circumstances. If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to terminate the contract.

The first subparagraph shall not be applicable to sales contracts where the trader has refused to deliver the goods or where delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date is essential. In those cases, if the trader fails to deliver the goods at the time agreed upon with the consumer or within the time limit set out in paragraph 1, the consumer

²⁵ 'Passenger car' is defined in Article 2(1) of Directive 1999/94/EC (relating to consumer information on fuel economy and CO2 emissions) as any 'motor vehicle of category M1, as defined in Annex II to Directive 70/156/EEC'. Directive 70/156/EEC is now replaced by Directive 2007/46/EC (on approval of motor vehicles), where vehicle category M1 is defined as '**Vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat**'. Finally, Article 3 of this Directive defines 'vehicle' as 'any power-driven vehicle which is moved by its own means, **having at least four wheels**, being complete, completed or incomplete, with a maximum design speed exceeding 25 km/h, including any trailer which is towed by a motor vehicle'.

shall be entitled to terminate the contract immediately.

3. Upon termination of the contract, the trader shall, without undue delay, reimburse all sums paid under the contract.

4. In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided for by national law.

Article 18 only applies to sales contracts, as expressly stated in Article 17(1). The provisions in Article 18 on the time of delivery are linked to the requirement in Article 5(1)(d) and Article 6 (1)(g) to indicate the time for delivery of goods.

Under Article 6(1)(g) concerning **distance and off-premises contracts** the trader must inform the consumer of '*the time by which the trader undertakes to deliver the goods*'. For **on-premises contracts** under Article 5(1)(d), this information must be provided 'where applicable'.

Consequently, in **on-premises contracts**, this information does not have to be provided if the goods are delivered or the service performed immediately. For on-premises sales contracts, this information also does not have to be provided if the seller plans to deliver the goods within the 30-day time limit specified in Article 18(1) (see also Chapter 4 on pre-contractual information requirements).

It is important to note that the Directive has no specific rules regarding service contracts if the trader fails to indicate the time for the performance of the services. The consequences of such omission may be regulated in national law.

Under Article 18(2), if the trader does not deliver within this time limit or within the time limit stated to the consumer, the consumer has to agree with the trader on an extension of the delivery period. If the trader still does not deliver before the extension expires, the consumer is entitled to terminate the contract.

However, if the stated delivery period or the default 30-day period is essential (e.g. for delivery of a wedding dress – see recital 52) and the trader fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately upon expiry of the initially agreed time limit.

National laws may regulate the way the consumer should notify the trader of termination of the contract (see recital 52).

Under Article 18(4) national laws may provide the consumer with other remedies, examples of which are given in recital 53: '*In addition to the consumer's right to terminate the contract where the trader has failed to fulfil his obligations to deliver the goods in accordance with this Directive, the consumer may, in accordance with the applicable national law, have recourse to other remedies, such as granting the trader an additional period of time for delivery, enforcing the performance of the contract, withholding payment, and seeking damages.*'

Under Article 18(3), if the contract is terminated, the trader must refund all sums paid without undue delay. The Directive does not specify a time limit for reimbursement. If there is a dispute between the consumer and the trader about the timing of the refund, the competent national bodies and courts will have to make a case-by-case assessment. In principle, a few working days should suffice for the trader to process the refund.

8. PASSING OF RISK

Article 20

In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

Under Article 20, the risk also passes to the consumer on delivery to a carrier if the carrier is chosen by the consumer and not offered by the trader.

Regular delivery of goods ordered via e-commerce, mail order etc. often takes place without immediate inspection by the consumer of the goods delivered. Under the Directive, the risk passes to the consumer on taking physical possession of the goods regardless of whether they have been inspected for defects. However, there is a requirement for fault-free delivery under the Consumer Sales and Guarantees Directive 1999/44/EC. Article 5(3) of that Directive stipulates that the burden of proof that the goods were delivered free of defects lies with the seller if a defect appears within six months of delivery.

9. FEES FOR THE USE OF MEANS OF PAYMENT

Article 19

Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

9.1. Introduction

Article 19 applies to the use of 'means of payment'. Since these terms are not defined in any way, Article 19 should apply to any means of payment, including cash.

As regards payments using **payment (bank) cards**, Article 19 is currently not relevant for 13 Member States that have used the option offered by Article 52(3) of the Payment Services Directive (PSD)²⁶ to ban surcharging.

Furthermore, on 24 July 2013 the Commission proposed measures²⁷ to ban payment card surcharges for most card transactions. Specifically, the proposal to revise the Payment Services Directive bans payment surcharges for so-called MIF-regulated²⁸ cards, which represent more than 95% of the consumer card market.

9.2. Definition of 'fees'

Article 19 should apply to all kind of fees which are directly linked to a means of payment, regardless of how they are presented to consumers.

- *For example, fees referred to as **administration, booking or handling fees**, which are commonly used in the online ticketing sector, especially by airlines and ferry companies, and also in online sales of tickets for events should be covered by Article 19 if they can be avoided by using a specific means of payment.*

Discounts granted to consumers for the use of a certain means of payment, most typically direct debit, should not automatically be considered fees for all other available means of payment within the meaning of Article 19. This is because the 'discount' may be based on the trader's legitimate interest in encouraging the use of certain means of payment that are more efficient in relation to his business structure, rather than on covering the costs of using some of the others²⁹.

However, it cannot be excluded that surcharging, within the meaning of this Article, might be achieved by giving identical or different discounts to various means of payment and leaving,

²⁶ [Directive 2007/64/EC](#) of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. Article 52(3) reads as follows: '3. *The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument. However, Member States may forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.*'

²⁷ [Proposal for a Directive](#) on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM/2013/0547 final); [Proposal for a Regulation](#) of the European Parliament and the Council on interchange fees for card-based payment transactions (COM/2013/0550 final)

²⁸ Multilateral Interchange Fees (MIFs) are multilaterally agreed fees payable between the Payment Service Providers (PSPs) of the payer/consumer and of the payee/merchant. Article 55(4) of the proposed Directive provides for banning payment surcharges for the most popular debit and credit card payment schemes used by consumers (such as Visa and MasterCard), for which the proposed Regulation introduces caps on interchange fees. The ban on surcharging will not apply to non-capped cards, which in particular include commercial cards (like company cards) and cards issued by so-called three party schemes where the cards are not issued by banks but by the scheme itself (e.g. American Express and Diners). For those payment transactions, Article 11(3) of the proposed Regulation confirms that Article 19 of the CRD would remain applicable to prevent a trader from charging in excess of the cost borne for accepting that means of payment.

²⁹ In particular, direct debit allows the trader to predict the cash flow. The discount for using direct debit may therefore be granted not so much for using a specific means of payment but rather to encourage the consumer to pay regularly at a specified date.

for instance, only 1 or 2 payment methods outside the discount scheme. Each discount scheme would have to be assessed for compatibility with Article 19 on a case-by-case basis.

Article 19 should not prevent traders from charging different prices for the same good or service when sold through different sales channels:

- *For example, a higher price might be charged for a concert ticket issued directly at the theatre and a lower price charged at other sales premises.*

9.3. Definition of the 'cost' borne by the trader

9.3.1. *The Merchant Service Charge and other direct costs for processing card payments*

The Directive neither defines nor gives details of the notion of 'cost borne by the trader' referred to in Article 19.

For most traders, the **merchant service charge ('MSC')** is the largest single component of the cost of accepting card payments. The MSC generally includes:

- 1) the interchange fee paid by the trader's bank (the acquirer bank) to the card issuer;
- 2) the fees paid by the trader's bank to the scheme (e.g. Visa or MasterCard); and
- 3) the margin retained by the trader's bank to cover costs and profit.

For credit card transactions, the MSC is typically fixed at a percentage of the transaction value, while for debit card transactions it is more commonly, though not universally, a flat rate. The MSC varies considerably depending on turnover, the business sector and other characteristics of the trader.

In addition, **there may be transaction or overhead fees paid by the trader to the acquirer bank or to a payment service intermediary.**

Payment service intermediaries help some retailers accept secure payments and may charge for providing payment functionalities, fraud detection and management services and/or services usually provided by acquirer banks³⁰.

³⁰ Payment service intermediaries help some retailers accept secure payments online or in other 'cardholder not present' situations such as through call centres or mail order. Intermediaries may charge for: (i) providing equipment and services needed to accept online and other distance payments, such as payment functionality for retailers' websites; and /or (ii) providing fraud detection and management services (in which some intermediaries specialise); and /or providing some or all of the merchant services usually provided by acquirer banks, up to full transaction processing. In these cases, the intermediary typically deals with the acquirer bank and acts as a point of contact for retailers, charging a mark-up on the acquirer's relevant fees.

9.3.2. *General costs of running a business that are indirectly linked to processing payments*

Traders usually bear other business costs, which can be indirectly linked to accepting or processing payments based on the means used. These are mainly administrative costs, equipment installation and set-up fees, and costs deriving from fraud and risk management.

9.3.3. *Eligible costs justifying a fee for the use of means of payment*

Only **fees which are directly charged to the trader** for the use of a means of payment should be considered as the 'cost' of that means of payment within the meaning of Article 19.

The costs to the trader that can legitimately be taken into account to justify fees to consumers are the **MSC and the transaction or overhead fees paid to intermediaries for some or all of the merchant services usually provided by acquirer banks**. In these cases the intermediary typically deals with the acquirer bank and acts as a point of contact for retailers, charging a mark-up on the acquirer bank's fees for the relevant services.

It is for the trader to decide whether to outsource, for instance, the provision of the following items/services:

- acquiring and maintaining point-of-sale equipment like chip-and-pin devices;
- fraud monitoring and maintaining compliance with Payment Card Industry Data Security Standards (PCI DSS) to help prevent fraud, as required by all the major card networks;
- developing and running infrastructure to handle card payments, such as payment functionality for websites or call centres; and
- staff training.

The costs of payment equipment, fraud detection and management (or similar) services should remain excluded from the notion of 'cost' under Article 19; they should be regarded instead as general costs of running a business, and this regardless of whether they are provided by the trader directly or outsourced. If outsourced, they are generally charged for separately from the main 'overhead fees' or MSC.

The processing of payments and handling cash involves **staff costs** that are difficult to quantify as they are often included in overall administrative costs. The costs deriving from **fraud and risk management** vary significantly between sectors and traders but are generally considered to be falling thanks to the introduction of new electronic payment technologies. These costs should also remain excluded from the notion of 'cost' under Article 19 and should be regarded instead as part of the general cost of running a business.

This argument is particularly valid for businesses that sell goods or provide services online only and that only accept electronic means of payment. For such businesses, the staff costs incurred in processing an electronic payment and costs deriving from fraud or risk management are fundamental elements of their very business model.

Furthermore, from a more practical viewpoint, including in the notion of 'cost' all possible elements that may be associated even indirectly with a means of payment, **would make Article 19 difficult to enforce and would prevent it from having any practical effect ('effet utile')**. This is true given that, for instance, very little information is publicly available about administrative costs and that the exact cost of equipment and/or installation can only be calculated by spreading the amount over an unknown number of transactions.

As only the trader is in a position to supply the relevant details about the cost of a means of payment, the need to verify, case by case, what the 'indirect costs' of a given means of payment are would require disproportionate enforcement efforts and would lead to a very uncertain and inconsistent outcome across the EU.

9.4. Payments in foreign cash

Cash payment in foreign currency is also a 'means of payment' within the meaning of Article 19. Therefore, a trader should not use currency conversion as a method of actually imposing payment surcharges on the consumer that are not justified by the actual costs incurred in offering the option of paying in foreign cash (in particular, the costs borne by the trader to convert the cash received).

- *For example, where a trader in a remote area accepts, as an exception, a cash payment by a tourist in a foreign currency, the eligible costs would include the cost of the trader's trip to the nearest bank to exchange the currency and any fees applied by the bank;*
- *By contrast, where accepting foreign cash as means of payment is a standard commercial practice for the trader, only the applicable currency exchange fees are likely to be eligible costs.*

10. COMMUNICATION BY TELEPHONE

Article 21

Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.

The objective of this provision is to protect consumers against additional charges if they need to call the trader with whom they have concluded a contract, for example, if they have a complaint. Such telephone calls must not require the consumer to pay more than the 'basic rate'.

Although the Directive does not give an explicit definition of the basic rate, its rationale is to require traders to ensure that the consumers do not pay more than the **pure cost** of the electronic communications service for calls subject to Article 21.

To comply with this 'basic rate' requirement, traders should use telephone numbers such as **standard (geographic) fixed or mobile numbers** that are not subject to any special tariff regime.

Non-geographic numbers that electronic communications service providers normally include in their offers of 'bundles' of minutes at a fixed monthly price, and numbers charged at no more than rates for calls to geographic numbers would also be examples of numbers charged at the basic rate.

By contrast, traders should, in particular, avoid using those telephone numbers that enable them to finance or contribute to the costs of call centres or draw additional revenues from these telephone calls through revenue sharing with telecom operators, such as **Premium Rate Service (PRS) numbers**.

The actual price of calling the trader for the purposes covered by Article 21, therefore, will continue to vary for different consumers depending on the electronic communications service provider chosen for the call.

The notion of the 'basic rate' for the purposes of the CRD should not be understood as obliging traders to use so called 'free-phone' numbers, which are generally free to the caller. Nor should it be interpreted as obliging the trader to choose a particular telecom provider or to switch from mobile to fixed telephony or vice versa.

Article 21 should not affect the existing differences between the domestic, international and mobile roaming call rates charged by the providers of electronic communications services. So, a consumer calling a seller based in a different Member State may pay more for that call than that trader's domestic customers.

11. ADDITIONAL PAYMENTS

Article 22

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

By virtue of Article 3(3)(k), the prohibition in Article 22 on using pre-ticked boxes for providing and charging for additional goods/services also applies to passenger transport services. Furthermore, it applies regardless of whether the additional service itself is generally subject to the Directive. Pre-ticked boxes prohibited by Article 22 could concern, for example:

- *as express delivery option or maintenance contract when buying IT equipment;*
- *an insurance contract when buying an air ticket.*

12. ONLINE DIGITAL PRODUCTS

12.1. Introduction

The Directive introduces a distinct category of '*contracts for digital content which is not supplied on a tangible medium*', referred to in this document as 'contracts for online digital content'. The Directive does not give an express definition of these contracts but recital 19 explains that '*contracts for digital content which is not supplied on a tangible medium should be classified, for the purpose of this Directive, neither as sales contracts nor as service contracts.[...]*'.

'Digital content' is defined in Article 2(11) as '*data which are produced and supplied in digital form*'. Recital 19 provides examples: '*Digital content means data which are produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, from a tangible medium or through any other means. [...]*'.

This broad definition of digital content means that 'contracts for online digital content' may cover a potentially very large variety of situations involving the supply of data in digital form.

Furthermore, in view of the distinction drawn in recital 19, **contracts for online digital content are subject to the Directive even if they do not involve the payment of a price by the consumer**. Indeed, although the Directive, in Article 2(5) and (6), defines a 'sales contract' and a 'service contract' as contracts whereby the consumer pays or undertakes to pay a price, there is no provision regarding contracts for online digital content in the Directive that would make them subject to a similar requirement that the consumer pay a price.

Including contracts for free online digital content considerably expands the scope of application of the Directive. However, since the Directive applies to '*contracts concluded between consumers and traders*' (Article 1), it should not apply to online digital content provided by means of broadcasting of information on the internet without the express conclusion of a contract. In itself, access to a website or a download from a website should not be considered a 'contract' for the purposes of the Directive.

Depending on how the order process is organised, multiple digital content items may be offered and acquired under a single contract for online digital content, for example, during a **single connection session** to the trader's platform.

Furthermore, depending on its terms, a subscription contract may cover the supply of a range of digital content. If covered by a subscription contract, each supply of individual digital content under that contract would not, accordingly, constitute a new 'contract' for the purposes of the Directive.

By contrast, where the platform provider or another trader offers to the subscriber specific digital content that is not covered by the subscription, the supply of such digital content would constitute a new contract for the purposes of the Directive.

Where the digital product includes **optional additional and built-in purchases**, the consumer should be duly informed that such additional purchasing options may be offered, before acquiring the digital product. This requirement could apply, for example, to:

- *apps that include in-app purchases, such as add-ons or extra levels in a video game;*
- *subscriptions to audio-visual content services that include optional pay-per-view content (movies) offered for additional payment.*

In these cases, traders should acquire **consumer's express consent** in accordance with Article 22 of the Directive for any extra payment in addition to the remuneration for the trader's main contractual obligation.

Furthermore, consumers should be clearly informed, up-front and in a prominent manner, about the **payment arrangements** for these additional purchases before signing up to the main digital product in which they are offered.

The default setting for payments should not allow the additional purchases to be made without the consumer's explicit consent (e.g. via a password or other appropriate means). Regarding in-app purchases, when the system provides for time slots for the validity of authentication (e.g. a 15 minutes slot), traders should not automatically apply default settings, but rather request the consumer's explicit consent also in relation to the applicable duration of the validity³¹.

12.2. The right of withdrawal

In relation to **contracts for online digital content**, Article 16(m) regulates the right of withdrawal as follows: *'[Member States shall not provide for the right of withdrawal in respect of contracts as regards]: (m) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.'*

Article 16(m) pursues an objective similar to that of the rule in Article 16(i) exempting sealed tangible data carriers (CDs, DVDs etc.) from the right of withdrawal if the consumer unseals them. This means that in both these cases, unlike that of the withdrawal from the provision of services (see Chapter 6.5.), the consumer has no right to 'test' the digital content during the right of withdrawal period.

Accordingly, the consumer would lose the right of withdrawal as soon as the performance of the contract has begun with his consent and acknowledgment of the loss of this right, such as at the start of the downloading or streaming of a video or audio file. If a trader provides a web link to launch streaming or downloading, the consumer would only lose the right of withdrawal after activating that link.

³¹ See [IP/14/187](#) of 27/02/2014 and the [Common Position](#) of the national consumer enforcement authorities on consumer protection in relation to "in-app purchases" for on-line games.

'Express' consent and acknowledgement for the purposes of Article 16(m) should be interpreted by analogy to the rules on express consent provided in Article 22 on additional payments for additional services. This means the consumer has to take **positive action**, such as ticking a box on the trader's website. Expression of consent and acknowledgment by means of a pre-ticked box or accepting the general terms and conditions is not likely to satisfy the requirements of Article 16(m).

The consumer's express consent and acknowledgement can be given in one statement, for example, in the following terms:

- *[] I hereby consent to immediate performance of the contract and acknowledge that I will lose my right of withdrawal from the contract once the download or streaming of the digital content has begun.*

Where the online digital content is supplied under these terms, they would also convey the information about the exception from the right of withdrawal required under Article 6(1)(k). So it would not be necessary to provide the information under Article 6(1)(h), including the model withdrawal form set out in Annex I(B).

In addition, Article 8(7) specifically requires traders to include, in the confirmation of the contract, **confirmation of the above-mentioned consent and acknowledgement** before the start of the performance (see also Chapter 5.4. on the confirmation of the contract).

If any of these conditions is not fulfilled, Article 14(4)(b) applies and entitles the consumer either not to pay for the content received or be reimbursed for the amounts paid:

Article 14

4. The consumer shall bear no cost for:

[...]

(b) the supply, in full or in part, of digital content which is not supplied on a tangible medium where:

(i) the consumer has not given his prior express consent to the beginning of the performance before the end of the 14-day period referred to in Article 9;

(ii) the consumer has not acknowledged that he loses his right of withdrawal when giving his consent; or

(iii) the trader has failed to provide confirmation in accordance with Article 7(2) or Article 8(7).

The remedy under Article 14(4)(b) should apply even where consumer has lost the right of withdrawal in accordance with Article 16(m), if the trader has not complied with the obligation to provide confirmation of the consumer's consent and acknowledgment under Article 14(4)(b)(iii).

12.3. Information obligations

In addition to the other pre-contractual information requirements discussed in Chapter 4, providers of digital content are subject to specific information requirements on the functionality and interoperability of digital content under Article 6(1)(r) and (s) (for off-premises and distance contracts – identical requirements for on-premises contracts are set out in Article 5(1)(g) and (h)):

Article 6(1)

(r) where applicable, the functionality, including applicable technical protection measures, of digital content;

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

Recital 19 explains that: '[...] *The notion of **functionality** should refer to the ways in which digital content can be used, for instance for the tracking of consumer behaviour; it should also refer to the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding. The notion of relevant **interoperability** is meant to describe the information regarding the standard hardware and software environment with which the digital content is compatible, for instance the operating system, the necessary version and certain hardware features [...]*'.

In view of the great diversity of digital products, it does not appear feasible to give a single exhaustive list of functionality and interoperability parameters that would apply to all digital products. The trader should assess the need to provide this information according to a particular product's characteristics. The following non-exhaustive list shows the main parameters for functionality and interoperability, and may be used as a checklist when deciding what information is to be provided about a specific product.

12.3.1. Functionality

As appropriate to the product, the following information should be given:

- 1) The language of the content, and, if different, the language of any instructions included with the content;
- 2) The method of providing the content: e.g. streaming, online, one-off downloading, access to download for a specified time;
- 3) For video or audio files: the playing duration of the content;
- 4) For downloadable files: the file type and size;
- 5) Whether there is a commitment or no commitment by the trader or a third party to maintain or update the product;
- 6) Any conditions for using the product not directly linked to interoperability, such as:
 - a. tracking and/or personalisation;

- b. the need for an internet connection to use the product and its technical requirements (such as minimum download and upload speed);
 - c. the need for other users to have specific software installed (e.g. for communication software).
- 7) Any limitations on the use of the product:
- a. limits on the number of times, or the length of time in which a digital product can be watched, read or used;
 - b. limits on the reuse of content, for purposes such as private copies;
 - c. restrictions based on the location of the consumer's device;
 - d. any functionalities that are conditional on additional purchases, such as paid content, club memberships or additional hardware or software.

12.3.2. Interoperability

Interoperability can be described by giving information on devices that the content can be used with; where applicable this should include information about the necessary operating system and additional software, including the version number, and hardware, such as processor speed and graphics card features.

ANNEX I – MODEL FOR THE DISPLAY OF CONSUMER INFORMATION ABOUT ONLINE DIGITAL PRODUCTS

The model is intended both to provide consumer information in a uniform and comparable manner and to help industry comply with the information requirements under the Directive for digital products.

































Specifically, the model provides one way for traders to give the necessary pre-contractual information about a digital product in accordance with Article 8(2) and (4) of the Directive (discussed above in Chapter 5). It does not restrict the trader's right to provide the required information in another legally compliant form.

In order to be 'appropriate to the medium and to the goods or services' as required in Article 6(1)(a), the description of the main characteristics of the digital product should also include information on its functionality and interoperability, without which consumers may not be able to assess whether the product meets with their requirements:

- *For example, the file type may be useful for a consumer to judge whether the downloadable song fits into the consumer's existing music collection of, e.g. uncompressed media files. However, for streamed music the file type may be less relevant.*
- *Similarly, low-cost mobile phone applications may not require information on the conditions for updates, while for an office suite or virus scanner the consumer would require such information.*

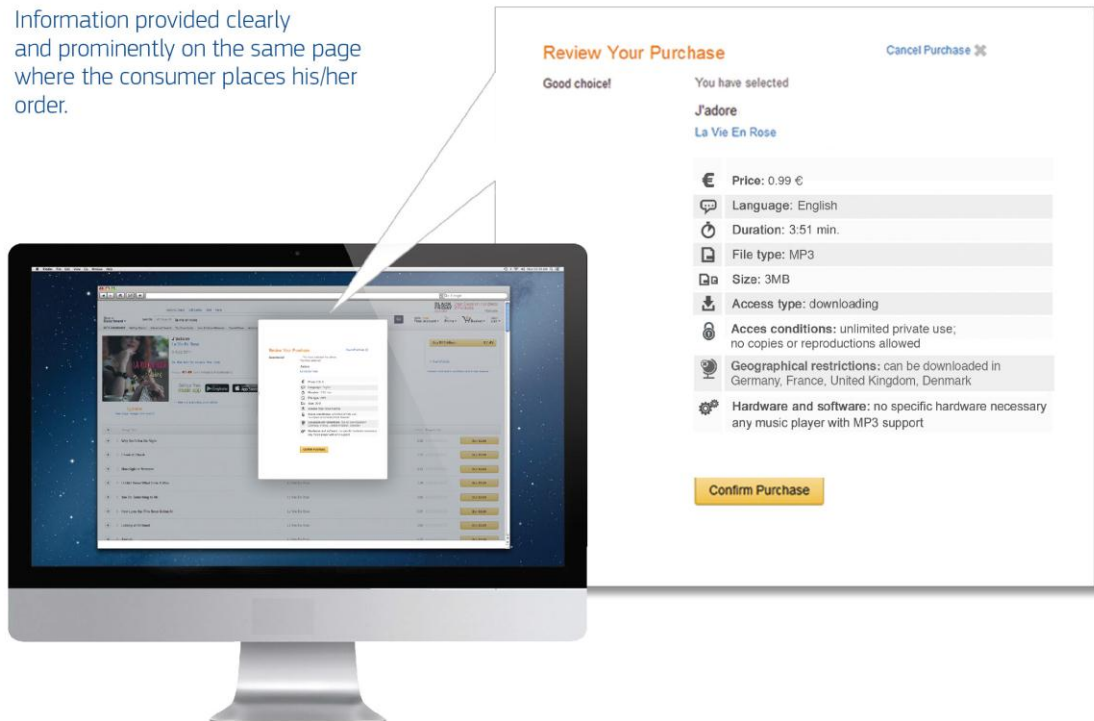
Traders should be encouraged to use the information categories with their icons, the table-like display, and the order of the information items as shown in the following examples. Other graphical elements, such as font or colours, can be adapted by traders to their selling environment.

A set of icons to illustrate the relevant information categories

 Provider	 Trader name	 Interoperability					
 Functionality	<table border="1"> <tr> <td> Internet connection</td> </tr> <tr> <td> Geographical restrictions</td> </tr> <tr> <td> Updates</td> </tr> <tr> <td> Tracking</td> </tr> <tr> <td> Resolution</td> </tr> </table>	 Internet connection	 Geographical restrictions	 Updates	 Tracking	 Resolution	 Price
 Internet connection							
 Geographical restrictions							
 Updates							
 Tracking							
 Resolution							
 Language		 Price					
 Duration		 Optional costs					
 File type		 Contract					
 Size		 Contract duration					
 Access type		 Termination					
 Access conditions		 Right of withdrawal					

Example: Desktop environment

Information provided clearly and prominently on the same page where the consumer places his/her order.



Review Your Purchase Cancel Purchase ✕

Good choice!

You have selected

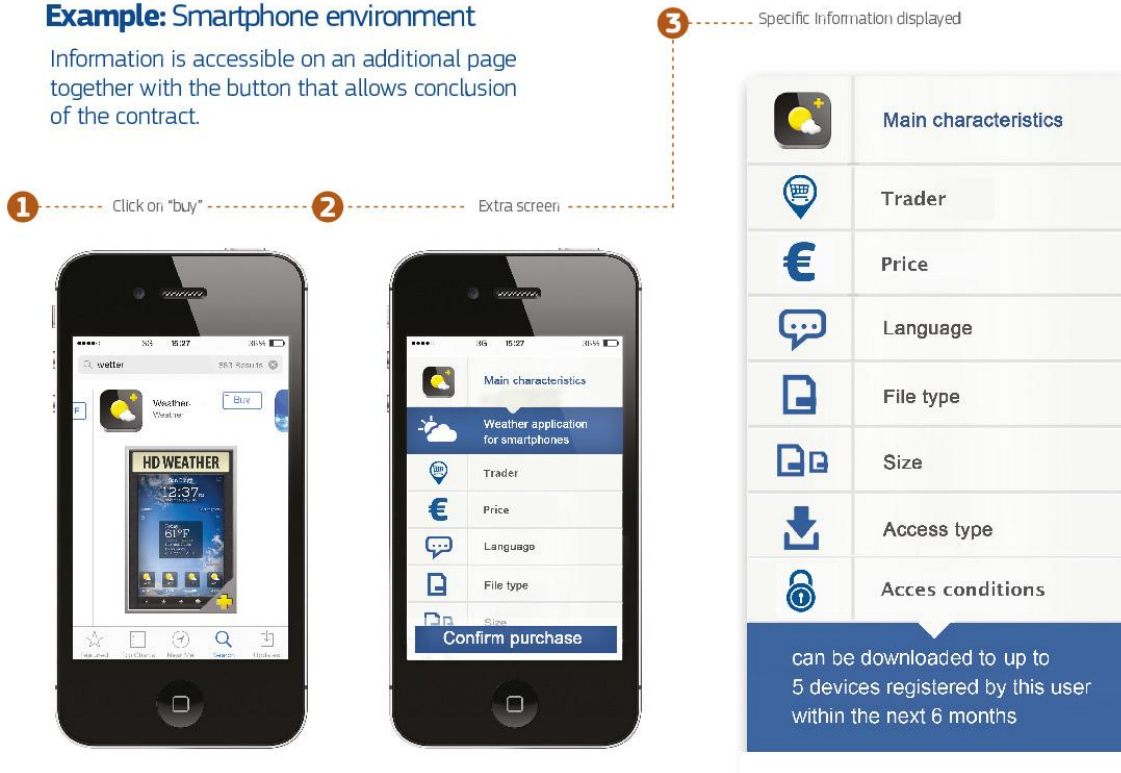
J'adore
La Vie En Rose

- € Price: 0.99 €
- 🗨️ Language: English
- 🕒 Duration: 3:51 min.
- 📄 File type: MP3
- 📏 Size: 3MB
- 📁 Access type: downloading
- 🔒 Access conditions: unlimited private use; no copies or reproductions allowed
- 🌐 Geographical restrictions: can be downloaded in Germany, France, United Kingdom, Denmark
- ⚙️ Hardware and software: no specific hardware necessary any music player with MP3 support

Confirm Purchase

Example: Smartphone environment














Information is accessible on an additional page together with the button that allows conclusion of the contract.

















Example: Music song for download

1. Main characteristics:		"Shoo-be-doo", Song 9 of the Album "La Vie en Rose" by The Fabric Softeners
2. Total price:		0,99 €
3a. Functionality		Language: English
		Duration: 3:51 min.
		File type: MP3
		Size: 2MB
		Access type: downloading
		Access conditions: unlimited private use; no copies or reproductions allowed
		Geographical restrictions: can be downloaded in Germany, France, United Kingdom, Denmark
3b. Interoperability:		Hardware and software: no specific hardware necessary, any music player with MP3 support

Example: Weather app

1. Main characteristics:	 Weather application
2. Total price:	 1,89 €
3. Provider:	 Dreams'app
4a. Functionality	 Language: English, instructions: English
	 File type: .EXE
	 Size: 3MB
	 Access type: download
	 Access conditions: can be downloaded on up to 5 devices registered by this user within 6 months
	 Updates: for two years regular updates improving stability and functionality
	 Tracking: we process information about your use of the product for market research
	 Internet connection: needed for downloading current weather information
	 Geographical restrictions: none
4b. Interoperability:	 Hardware and software: Windows Phone 8

Example: Video on demand subscription

1. Main characteristics:	 Monthly subscription to high definition video on demand service. More than 1000 movies on offer with regular additions (consult the current list here)
2. Total price:	 Total price: 9,90€ per month
	 Optional costs: specified movies only available against additional payment (consult the current price list here)
3a. Functionality	 Language: website and instructions: English, Français, Italiano
	 File type: Windows Media
	 Resolution: full HD (1920×1080p)
	 Access type: streaming
	 Access conditions: unlimited access to movies during the subscription period; no recording or copies allowed
	 Tracking: we process information about your use of the product for market research
	 Internet connection: at least 10Mbit/s download speed required for best performance
	 Geographical restrictions: access to the content only from France, Italy and United Kingdom
3b. Interoperability	 Hardware and software: a recent PC, Windows 7 or newer, Windows Media Player
4. Contract	 Duration: indeterminate, minimum 6 months
	 Termination: with one month notice by e-mail to terminate@filmcountry.it; early termination is possible but minimum 6 months must be paid

**ANNEX II – CONSUMER INFORMATION REQUIREMENTS IN THE CONSUMER RIGHTS,
SERVICES AND ECOMMERCE DIRECTIVES**

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
Scope of Application	Contracts concluded between a trader and a consumer subject to exceptions in Article 3(3).	Services supplied by providers in the Member State of establishment or temporarily cross-border (under freedom to provide services). Covers all services except those explicitly excluded in Art. 2	"Information society services" as defined in Directive 98/34/EC , i.e., services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.
I. Information about the trader			
I.1. Name	Article 5(1)(b) and Article 6(1)(b) ³² The identity of the trader, such as his trading name;	Article 22(1)(a) The name of the provider, his legal status and form	Article 5(1)(a) The name of the service provider;
I.2. Address and contact details	Article 5(1)(b) [...] the geographical address at which he is established and his telephone number; Article 6(1)(c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting; Article 6(1)(d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the	Article 22(1)(a) The geographic address at which he is established and contact details enabling him to be communicated with directly, as the case may be, by electronic means; Article 27 1. Member States shall take the general measures necessary to ensure that providers supply contact details, in particular a postal address, fax number or e-mail address and telephone number to which all recipients, including those resident in another Member State, can send a complaint or a request for information about the service provided. Providers shall supply their legal address if this is not their usual address for correspondence.	Article 5(1)(b)-(c) The geographic address at which the service provider is established and the details of the service provider, including his electronic mail address

³²

Article 6(1) sets out the information requirements for distance and off-premises contracts whilst Article 5(1) sets out these requirements for other (on-premises) contracts.

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
	trader on whose behalf he is acting, where the consumer can address any complaints;		
I.3. Trade or other public register (if applicable)		Article 22(1)(b) The name of the register and the provider's registration number, or equivalent means of identification in that register;	Article 5(1)(d) The trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
I.4. VAT number		Article 22(1)(d) Where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC	Article 5(1)(g) Where the service provider undertakes an activity that is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC
I.5. Specific requirements for regulated professions		Article 22(1)(e) Any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted; <i>At the recipient's REQUEST (Article 22(3)(b))</i> A reference to the professional rules applicable in the Member State of establishment and how to access them;	Article 5(1)(f) - any professional body or similar institution with which the service provider is registered, -the professional title and the Member State where it has been granted - a reference to the applicable professional rules in the Member State of establishment and the means to access them;
I.6. Conflict of interest		<i>At the recipient's REQUEST (Article 22(3) (c))</i> information on their multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest.	
I.7. Supervisory authority		Article 22(1) (c) Where the activity is subject to an authorisation scheme,	Article 5(1)(e) Where the activity is subject to an authorization scheme,

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
		the particulars of the relevant competent authority or the single point of contact	the particulars of the relevant supervisory authority
II. Conclusion of the contract			
II. 1 Cost of using the means of distance communication	Article 6(1)(f) The cost of using the means of distance communication for the conclusion of the contract where higher than basic rate		
II. 2 Technical steps			Article 10(1) (a) the different technical steps to follow to conclude the contract; (b) whether the contract will be filed by the service provider and whether it will be accessible; (c) the technical means for identifying and correcting input errors prior to the placing of the order; (d) the languages offered; Article 11(1) Acknowledgement of the receipt of the order without undue delay and by electronic means
III. Description of the Product			
III.1. Characteristics	Article 5(1)(a) and Article 6(1)(a) The main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;	Article 22 (1)(j) The main features of the service, if not already apparent from the context;	
III.2. Functionality	Article 5(1)(g) and Article 6(1)(r) Where applicable, the functionality, including applicable technical protection measures, of		

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
	digital content;		
III.3. Interoperability	Article 5(1)(h) and Article 6(1)(s) Where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.		
III.4 Promotional offers			Article 6 (c) identification of promotional offers and easily accessible and clearly and unambiguously presented conditions to qualify for them. (d) identification of promotional competitions or games and easily accessible and clearly and unambiguously presented conditions to qualify for participation
IV. Price			
	Article 5(1)(c) and Article 6(1)(e) The total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges [<i>only Art. 6(1)(e)</i> - and any other costs] or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. [<i>only Art 6(1)(e)</i> - In the case of a contract of indeterminate	Article 22(1)(i) The price of the service if pre-determined for a given type of service, <i>At the recipient's REQUEST (Article 22(3) (a))</i> If the price is not predetermined, then price of the service or, if an exact price cannot be given, the method for calculating the price, or a sufficiently detailed estimate;	Article 5(2) Were information society services refer to prices, these are to be indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs.

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
	duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided];		
V. Performance of the contract			
V.1. Delivery and payment	Article 5(1)(d) and Article 6(1)(g) [Only Art 5(1)(d) – Where applicable] the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services		
V.2. Complaint handling	Article 5(1)(d) and Article 6(1)(g) [...] where applicable, the trader’s complaint handling policy		
V.3. Financial guarantees	Article 6(1)(q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;		
V.4. Legal guarantee	Article 5(1)(e) and Article 6(1) (l) [...] a reminder of the existence of a legal guarantee of conformity for goods [...];		
V.5. Commercial guarantee and after-sale	Article 5(1)(e) [...]the existence and the conditions of after-sales services and commercial	Article 22(1)(h) The existence of an after-sales guarantee, if any, not imposed by law;	

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
services	<p>guarantees, where applicable;</p> <p>Article 6(1)(m)</p> <p>Where applicable, the existence and the conditions of after sales customer assistance, after-sales services and commercial guarantees</p>		
VI. Validity of the contract in time			
VI.1. Duration and termination of the contract	<p>Article 5(1)(f) and Article 6(1)(o)</p> <p>The duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;</p> <p>Article (6)(1)(p)</p> <p>Where applicable, the minimum duration of the consumer's obligations under the contract;</p>		
VI.2. Right of withdrawal	<p>Article 6(1)(k)</p> <p>Absence of the right of withdrawal and conditions of losing this right;</p> <p>Article 6(1)(h)</p> <p>The conditions, time limit and procedures for exercising the right of withdrawal, as well as the model withdrawal form;</p> <p>Article 6(1)(i)</p> <p>Obligation for consumer to bear the cost of returning the goods and the cost of returning the goods;</p> <p>Article 6(1)(j)</p> <p>Obligation to bear trader's reasonable costs in case of withdrawal</p>		

	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC	e-Commerce Directive 2000/31/EC
VII. Legal terms			
VII.1. General conditions		Article 22(1) (f) The general conditions and clauses, if any, used by the provider	Article 10(3) Contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.
VII.2. Applicable law and jurisdiction		Article 22(1) (g) The existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and/or the competent courts;	
VII.3. Codes of conduct	Article 6(1)(n) The existence of relevant codes of conduct, and how copies of them can be obtained, where applicable;	<i>At the recipient's REQUEST (Article 22(3)(d))</i> Any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;	Article 10(2) Any relevant codes of conduct to which the trader subscribes and information on how those codes can be consulted electronically.
VII.4 Out-of-court complaint and redress mechanisms	Article 6(1)(t) Available out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.	<i>At the recipient's REQUEST (Article 22(3)(e))</i> Information on the available non-judicial means of dispute settlement and how to access information about them Article 27(4) Providers who are subject to a code of conduct, or are members of a trade association or professional body, which provides for recourse to a non-judicial means of dispute settlement must inform the recipient thereof and mention that fact in any document which presents their services in detail, specifying how to access detailed information on the characteristics of, and	

	Consumer Rights Directive <u>2011/83/EU</u>	Services Directive <u>2006/123/EC</u>	e-Commerce Directive <u>2000/31/EC</u>
		conditions for, the use of such a mechanism.	
VIII.5. Professional liability insurance		Article 22(1) (k): The insurance or guarantees and in particular the contact details of the insurer or guarantor and the territorial coverage.	