

Guidance on the Consumer Rights Directive

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CRD – implementation process


- Transposition deadline – 13 December 2013
- Since September 2012 – three multilateral meetings with Member States' experts in charge of the transposition and bilateral contacts
- As of today, 11 December – 4 notifications of transposition (Greece, Germany, Cyprus, Lithuania)
- The National transposition measures to apply to contracts concluded as from 13 June 2014
- Until then, time for adaptations by businesses
- Guidance from the Commission to facilitate uniform application across the EU

State of transposition at EUR-Lex

EUR-Lex - 72011L0083 - EN - Windows Internet Explorer provided by Justice DG

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72011L0083:EN:NOT

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English (en)

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72011L0083

Title and reference

The fact that there is a reference to national execution measures does not necessarily mean that these measures are either comprehensive or in conformity.

NATIONAL PROVISIONS COMMUNICATED BY THE MEMBER STATES 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 Text with EEA relevance

National Execution Measures

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+ Information on regulatory choices (Article 29)

<http://ec.europa.eu/justice/consumer-marketing/rights-contracts/>



ALL TOPICS

CONSUMER AND MARKETING LAW

- Unfair commercial practices
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- Travel and Timeshare
- Enforcement

Key Dates

Legislation

Documents

Programmes

Public consultations

Events

Regulatory choices under Article 29 CRD

Information by Member States on the use of regulatory choices under Article 29 of Directive 2011/83/EC on Consumer Rights.

Last update: 10 December 2013

Belgium	
Bulgaria	
Czech Republic	
Denmark	
Germany	
Estonia	
Ireland	
Greece	Original  (91 kB) Unofficial EN translation  (102 kB)

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Find out more about so-called 'unfair commercial practices' and how to 'avoid them' in this Euronews edition of 'Right On'. [More](#)

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Classification of contracts

- **The CRD distinguishes between:**
 - Sales contracts
 - Service Contracts
 - Contracts for the supply of water, gas, electricity and heating (utilities)
 - Contracts for digital content not supplied on a tangible medium (with a broad definition of "digital content")
- **Consequences of the classification:**
 - the starting point of the right of withdrawal period (either delivery of goods or signature of contract)
 - Only sales and service contracts are subject to the condition of payment of price by the consumer to fall under the CRD
- **Challenges:**
 - Classification of contracts covering both goods and services
 - Classification of contracts for online services (cloud storage, communication applications, subscriptions etc.)

Pre-contractual information

- **General requirements:**
 - Criteria for assessing clarity and comprehensibility
- **Interplay with information requirements in other EU legislation**
- **Application of pre-contractual information requirements to:**
 - contracts transferred between consumers, such as users of utilities services (electricity, heating etc.)
 - Contracts for "day-to-day" transactions (possible exemption)

Off-premises contracts

- **The CRD further distinguishes between:**
 - off-premises contracts
 - distance contracts
 - Other contracts, i.e., contracts concluded on trader's business premises
- **Classification of movable business premises**
 - The scope of "off-premises" contracts under the CRD is broader than the scope of the current Doorstep Selling Directive 85/577/EEC
 - Challenge: classification of retail premises according to the criteria of "permanent" or "usual" (seasonal) use, in particular the case of market and fair stands and temporary "pop-up" stores

Distance contracts

- **Article 8(2) – essential information requirements**
 - Solutions to provide information clearly and prominently and directly before placing the order
 - Application to repetitive purchases in the context of a subscription, for example to a video game
 - Acknowledgement of the obligation to pay
- **Article 8(4) – special regime for means of distance of communication allowing limited time and space**
 - Scope of application – technologies limiting the amount of information that can be supplied (SMS contracts, other?); trading websites specifically customised for devices with small screens
- **Article 8(7) – confirmation of contract on durable medium**
 - Possible non-delivery of confirmation e-mail
 - Use of customer's private online accounts with the trader

Right of Withdrawal

- **Different calculation of the withdrawal period depending on the classification of the contract**
- **Different procedures and consequences for withdrawal from sale/provision of:**
 - Goods – consumer's right to examine them but liability for diminished value
 - Services – consumer's right to request immediate performance keeping the right of withdrawal subject to payment of compensation; no right of withdrawal from service contracts after service fully performed
 - Utilities (electricity, gas etc.) – compensation regime as for services
 - Online digital content – no right of withdrawal if performance started

Right of Withdrawal – sale of goods

- **Scope of the right to examine the goods**
- **Liability for the diminished value**
 - Evaluation of the diminished value
 - Enforcement of the liability
- **Partial withdrawal and withdrawal after receiving replacement goods**
- **Return of goods and reimbursement**
 - Passing of risk in returning the goods
 - Interpretation of "evidence" of having sent back the goods
 - Use of different means of payment for reimbursement
 - Offer by the trader to collect the goods / trader's agreement to bear the cost of return
 - Information about the cost of return

Withdrawal in respect of goods – Exceptions

- **Personalised goods and goods made to specifications (Article 16(c))**
 - Goods involving many standard options manufactured upon order
- **Contracts with specific date or period of performance (Article 16(I))**
 - Application to long-term contracts - role of the capacity reservation and the objective difficulty to fill the capacity in applying this exception

Right of Withdrawal – services/ utilities

- **Loss of the right withdrawal from service contract when contract fully performed**
 - Implementation of the consumer's acknowledgement
 - Consequences of trader's failure to get it
- **Application of the compensation regime (Article 14(3))**
 - Implementation of the consumer's "express request" for immediate performance
- **Termination of the contract in case of withdrawal**

Right of Withdrawal – online Digital products

- **The withdrawal regime depends on the classification of the online digital product as "service" or "digital content":**
 - For services – right of withdrawal even in case of immediate performance subject to compensation
 - For "digital content" – no right of withdrawal in case of immediate performance, provided requirements are met by the trader (Article 16(m))
- **Acquiring consumer's express consent and acknowledgement for immediate performance of digital content**
- **Consequences of failure to comply with requirements for immediate performance (Article 14(4)(b)):**
 - Sanction provided in case of not confirming the consent and acknowledgment even if no more right of withdrawal under Article 16(m)

Horizontal issues (all contracts)

- **Delivery (Article 18)**
 - Trader's obligation to reimburse payments in case of non-delivery "without undue delay"
- **Fees for the use of means of payment (Article 19)**
 - Interaction with the rules on payment services
 - Eligible costs to justify fees charged to consumers
 - Treatment of trader's internal (administrative) costs for processing payments
- **After-sales telephone contacts (Article 21)**
 - Criteria for identifying calls charged at "basic rate"
- **Prohibition to use pre-ticked boxes for additional payments (Article 22)**

Thank you for your attention

Comments/ suggestions welcome to:
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by 10 January 2014