

# CODE OF EU ONLINE RIGHTS



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**CODE**  
**OF**  
**EU ONLINE RIGHTS**

**About this Code**

This Code compiles the basic set of rights and principles enshrined in EU law that protect citizens when accessing and using online networks and services.

These rights and principles are not always easy to grasp because they are not exclusive to the digital environment and are scattered across various directives, regulations and conventions in the areas of electronic communications, e-commerce and consumer protection. Moreover, in many cases these rights and principles are subject to minimum harmonisation, which means that Member States are allowed to go beyond the minimum standards required by EU law. Consequently, some Member States might have introduced higher levels of protection than those stipulated by EU directives when transposing them into national law. This is the case with some parts of the consumer protection legislation for example.

While the majority of these rights are not in themselves new, due to the complexity of the legal framework many online consumers might not be aware of them. This is precisely the reason for establishing this Code: to make citizens aware of their minimum rights and the principles recognised in EU law when going online, being online, and when buying and consuming services online.

This Code is not about creating new rights but about compiling existing rights and principles.

The Code is not enforceable per se, but the particular rights and principles it describes are enforceable under the legal instrument from which they derive.

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## SECTION 1

### Rights & Principles applicable when you access and use online services

#### Chapter 1: Access to electronic communications networks and services<sup>1</sup>

- (1) Everyone in the EU must have the possibility to access a minimum set of electronic communications services of good quality at an affordable price. This is also known as the '**universal service**' principle.

As regards rights of access to internet, all reasonable requests for connection at a fixed location to a public communications network must be met by at least one operator.

Such connection must be capable of supporting voice, fax and data communications at data rates that are sufficient to permit functional internet access and the provision of voice telephony services.

This also applies to **disabled end-users** who must have equivalent access and choice to that enjoyed by the majority of consumers.<sup>2</sup>

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<sup>1</sup> Keywords: universal service, equivalence in access for disabled end-users

<sup>2</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and user's rights relating to electronic communications networks and services (Universal Service Directive) as amended by Directive 2009/136/EC, Articles 1, 3, 23a.

## Chapter 2: Access to services and applications of your choice<sup>3</sup>

- (1) Everyone in the EU shall be able to access and distribute any information and to run any application and service of their choice through electronic communication networks.

**The fundamental rights and freedoms** of natural persons as guaranteed by the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the general principles of EU Law shall be respected in this context.

For this reason, any measure related to consumers' access to or use of services and applications liable to restrict those fundamental rights or freedoms could only be imposed by a Member State if appropriate, proportionate and necessary within a democratic society<sup>4</sup>.

- (2) Regulatory authorities in the electronic communications area must promote the ability of everyone in the EU to access and distribute any information and to run any application and service of their choice. This is also known as the principle of '**open and neutral character of the internet**'<sup>5</sup>.

These regulatory authorities have the power to set **minimum quality of service requirements** in case of problems to safeguard the openness of the internet. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks<sup>6</sup>.

- (3) **Every disabled consumer** must benefit from the choice of e-communication providers and services available to the majority of consumers<sup>7</sup>.

For **consumers with a visual or hearing disability** providers of audiovisual media services are encouraged to ensure that their programmes, e.g. films, sports events, situation comedies, documentaries, children's programmes or original dramas, as well as commercial communications are gradually made accessible to them<sup>8</sup>.

This obligation applies irrespective of the type of service and of the delivery platform, as long as the latter relies on electronic communications networks, therefore covering also audiovisual media services purchased online.

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<sup>3</sup> Keywords: Fundamental Rights, free access to Internet, open & neutral character of Internet, minimum quality of service, equivalence in choice for disabled end-users, gradual access to hearing and visually impaired, protection of minors, protection against incitement to hatred based on race, sex, religion or nationality.

<sup>4</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009, Article 1(3a).

<sup>5</sup> Directive 2002/21/EC (Framework Directive), Article 8 (4) g.

<sup>6</sup> Directive 2002/22/EC (Universal Service Directive) Article 22(3).

<sup>7</sup> Directive 2002/22/EC (Universal Service Directive) Article 22.

<sup>8</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), Article 7.

- (4) **Minors are protected** in relation to audiovisual media programmes and commercial communications which might seriously impair their physical, mental and moral development. Such content can only be made available online in the EU on explicit request, and only in a manner that ensures that minors will not normally hear or see such services<sup>9</sup>.
- (5) **Incitement to hatred** based on race, sex, religion or nationality is forbidden in audiovisual media services. Governments must ensure that neither audiovisual media programmes nor audiovisual commercial communications that are delivered online contain any such incitement<sup>10</sup>.

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<sup>9</sup> Directive 2010/13/EU (Audiovisual Media Services Directive), Article 12.

<sup>10</sup> Directive 2010/13/EU (Audiovisual Media Services Directive), Article 6.

### Chapter 3: Non-discrimination when accessing services provided online<sup>11</sup>

- (1) Consumers who wish to acquire **online services**<sup>12</sup> in another Member State shall be granted access by traders to **public information on the conditions of access**.
- (2) Consumers **shall not be refused access to services online** on grounds of their Member State of residence unless the refusal is justified by objective criteria<sup>13</sup>. Where possible, traders shall inform consumers of this justification for non-delivery of a service into certain territories in the information that they make available to the public at large. When this is not possible, they shall provide such information upon the consumer's request.
- (3) When consumers try to access services online, service providers **shall not apply less favourable conditions of access to the service** to consumers on grounds of their Member State of residence unless the differences are justified by objective criteria<sup>14</sup>. Upon the consumer's request, traders shall use their best endeavours to inform consumers of the justification for differences in treatment.

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<sup>11</sup> Keywords: non discrimination for grounds of residence; equal access to online services throughout EU; equal treatment in online environment.

<sup>12</sup> This principle only applies to services (not goods).

<sup>13</sup> Commission Staff Working Document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market ('the Services Directive') These guidelines clarify the way in which the case-by-case assessment should be carried out with a view to determining whether objective criteria can justify a given difference in treatment.

[http://ec.europa.eu/internal\\_market/services/docs/services-dir/implementation/report/SWD\\_2012\\_146\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/SWD_2012_146_en.pdf)

<sup>14</sup> See footnote 13.

[http://ec.europa.eu/internal\\_market/services/docs/services-dir/implementation/report/SWD\\_2012\\_146\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/SWD_2012_146_en.pdf)



## Chapter 4: Privacy, protection of personal data and security<sup>15</sup>

- (1) Personal data protection is a fundamental right, and is also enshrined in the Lisbon Treaty. The Charter of Fundamental Rights of the European Union provides that "Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified"<sup>16</sup>.

Every individual has the right to adequate **protection of his personal data**<sup>17</sup>. Processing of personal data must be necessary, fair, lawful and proportionate. The data that individuals provide directly or indirectly must not be used for purposes other than originally intended. Nor can such data be passed on indiscriminately to entities that the individual has not chosen to be involved with. These rights apply to everyone, irrespective of nationality or place of residence. Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life is only permitted with explicit consent of the individual, where allowed by national legislation<sup>18</sup>.

- (2) Individuals have the right to **receive information** from people and companies holding some of their personal data in their files, such as websites, data bases, service providers etc. ("data controllers"), and they have the right to **correct or erase** this data if it is incomplete or inaccurate:
- Data controllers are required to inform consumers when they collect personal data about them;
  - Individuals have the right to know the name of the controller, the intended use of the data processing, and to whom the data may be transferred;
  - Individuals are entitled to ask the data controller whether he is processing personal data about them;
  - Individuals have the right to receive a copy of the data that relates to them in intelligible form;
  - Individuals have the right to ask for the deletion, blocking or erasing of the data if it is incomplete, inaccurate or obtained unlawfully. Individuals have the right to object to the processing of personal data.
- (3) Individuals have the right not to be subject to a decision which produces legal effects concerning them or that significantly affects them and which is based solely on

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<sup>15</sup> Keywords: privacy, data protection, security, personal data,

<sup>16</sup> Treaty of Functioning of the European Union, Article 16. Charter of Fundamental Rights of the European Union, Article 8.

<sup>17</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Articles 6 and 12.

<sup>18</sup> Directive 95/46/CE of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Article 8.

automated processing of data intended to evaluate certain personal aspects relating to them, such as their performance at work, credit worthiness, reliability, conduct, etc.<sup>19</sup>

(4) These rights also apply online, where individuals have in addition the following rights<sup>20</sup>:

- To be fully informed and give their agreement if a website stores and retrieves information from their terminal equipment or wants to track them when they surf the internet;
- Confidentiality of their online communications, such as emails;
- To be notified if their personal data held by their Internet Service Provider has been compromised, e.g. lost or stolen, and their privacy is likely to be adversely affected;
- Not to be sent unsolicited commercial communications, known as 'spam', unless they have given their agreement.

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<sup>19</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Article 15.

<sup>20</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications) as amended by Directive 2006/24/EC and Directive 2009/136/EC, Articles 4, 5 and 13.

## SECTION II

### Rights & Principles applicable when you buy goods or services online

#### Chapter 5: Information prior to the conclusion of a contract online<sup>21</sup>

- (1) Every consumer in the EU has the right to receive clear, correct and comprehensible **key information** from a trader about the product or service **before making an online purchase**.

This information must include the main characteristics of the product, price inclusive of taxes, delivery costs, the arrangements for payment, delivery or performance, identity and geographical address of the trader, the existence of a right of withdrawal or cancellation (for products which involve such right), the period for which the offer or the price remains valid, and, if applicable, the minimum duration of the contract<sup>22</sup>. Unless contracts are concluded exclusively by exchange of electronic mail or by equivalent individual communications, this information must also contain the different technical steps to follow to conclude the contract; whether or not the contract will be filed and accessible; the technical means for identifying and correcting input errors, and the languages offered for the conclusion of the contract<sup>23</sup>.

When the consumer places his order online, he has the right to receive an acknowledgment of the receipt of the order without undue delay and by electronic means<sup>24</sup>.

- (2) The right to receive key information in good time before being bound by any distance contract or offer is also applicable to **financial services** including banking, credit, insurance, personal pension, investment of payment in nature. The information should be presented in a clear and comprehensive manner and should include details on the supplier and the main characteristics of the financial service, such as price including all taxes, arrangements for payment or performance. Suppliers should also inform consumers about their contractual rights, such as to withdraw from the contract or to terminate the contract earlier, and about possible action in case of a problem.

For practical reasons, in the case of financial services, consumers may receive a limited amount of information when they speak over the phone with the supplier of financial

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<sup>21</sup> Keywords: information prior to the contract; information before buying online, information before concluding a distance contract; information on financial services when contract concluded online, misleading comparative advertising.

<sup>22</sup> 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, Article 4. \*\* As from 13 June 2014 this Directive will be replaced by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights which will change the requirements for precontractual information.

<sup>23</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market (Directive on electronic commerce), Article 10.

<sup>24</sup> Directive 2000/31/EC on electronic Commerce, Article 11.

services and when, at their request, the contract is concluded online. The full information would in that case be given immediately after concluding the contract<sup>25</sup>.

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<sup>25</sup> 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 amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, Article 3.

## Chapter 6: Timely, clear and complete contractual information<sup>26</sup>

- (1) Every **online consumer** concluding a contract in the EU has the right to have **easy, direct and permanent access** to at least the name and geographic address of the provider, the electronic mail address or website, the trade register in which the provider is entered and his registration number, the professional title and professional body with which the provider is registered, the VAT details where applicable and any other detail allowing rapid and effective contact with the provider<sup>27</sup>. The online consumer must also have access to codes of conduct to which the provider subscribes and to contract terms and general conditions in a way that allows him to store and reproduce (print) them. This right does not apply where contracts are concluded exclusively by exchange of electronic mail or by equivalent individual communications<sup>28</sup>.
- (2) Every consumer has the right to receive, after having ordered the goods or services, **confirmation of the key elements of the contract** in writing or on a durable medium, such as e-mail. This information must be given at the latest at the time of delivery of goods or, for services, in good time during their performance. However, the trader does not need to repeat information already given before.

The confirmation must always include information under what conditions and how the consumer can withdraw from the contract, an address where the consumer can direct complaints, information on after-sales services and guarantees which exist and, for contracts of more than a year or of indefinite duration, the conditions for cancelling the contract<sup>29</sup>.

- (3) After concluding a contract on financial services online consumers have the **right to receive**, in good time before being bound by the distance contract, **detailed information on the terms of the contract**, e.g. the characteristics of the service, the price and arrangements for payment and performance. Suppliers should also inform consumers about their contractual rights, how to withdraw from the contract or to terminate the contract earlier, any information on existing after-sales services and guarantees and possible actions in case of a problem<sup>30</sup>.
- (4) **Subscribers of electronic communications services**, including those used for the delivery of information society services, have the **right to receive information** from the provider e.g. on applicable prices, tariffs and charges, including tariff options and packages, standard terms and conditions for access to and use of the services provided and quality of the service. Moreover disabled subscribers shall be regularly informed of the products and services designed for them<sup>31</sup>.
- (5) Before making an online payment transaction every consumer has the **right to receive all relevant payment details**, in particular, terms and conditions of the service, including information on the payment service provider responsible for the transaction;

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<sup>26</sup> Keywords: Key information, detailed contractual information, right to receive information.

<sup>27</sup> Directive 2000/31/EC on electronic commerce, Article 5; Directive 2010/13/EU Audiovisual Media Services Directive, Article 5.

<sup>28</sup> Directive 2000/31/EC on electronic commerce, Article 10.

<sup>29</sup> Directive 1997/7/EC on distance selling, Article 5.

<sup>30</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services, Article 5.

<sup>31</sup> Directive 2002/22/EC Universal Service Directive, Articles 10, 21 and 22.

information about the characteristics of the payment service and the processing time;  
information about charges applicable for the transaction and on the refund rights;  
information about any additional charges or discounts applied by the merchant.

After each payment transaction the consumer shall receive the confirmation, which will contain at least the amount of the purchase, the date of the transaction, and a breakdown of any charges applied<sup>32</sup>.

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<sup>32</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, Articles 37, 38, 42, 46 and 47

## Chapter 7: Fair contract terms & conditions<sup>33</sup>

- (1) Any consumer in the EU, also in the digital environment, is **protected from unfair standard contract terms** by traders that create an **unreasonable imbalance** to the detriment of the consumer. If a contract contains such terms, the consumer is not bound by them, although the contract itself usually remains valid. Unfair terms are in particular<sup>34</sup>:
  - Contract terms that a consumer did not have any real opportunity to become acquainted with before the conclusion of the contract, but which bind the consumer;
  - Contract terms that exclude or hinder the consumer's right to take legal action or exercise any other legal remedy (e.g. by requiring them to take disputes exclusively to arbitration);
  - Contract terms automatically extending a contract of fixed duration when the deadline fixed for the consumer to express his desire not to extend it is unreasonably short;
  - Contract terms that allow considerable price increases without giving the consumer the right to cancel the contract.
- (2) The consumer has the right to contractual terms written in **plain and understandable language** and this applies as well online. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail<sup>35</sup>.
- (3) Subscribers of **electronic communications services** have the right to **minimum standard contract terms and conditions** with companies providing internet access. Subscribers also have the right to be informed well in advance if the service provider wants to amend the contract and to withdraw from the contract without penalty if they do not accept the new conditions; they also have the option to subscribe to a 12-month maximum contract period for online connection, and not to be obliged to subscribe to contracts for an initial period of more than 24 months<sup>36</sup>.
- (4) **When paying online** for goods and services, **the same charges** for a transaction in euro apply whether the merchant is located in the country of the consumer or in another EU Member State. This includes payments in euro by credit (bank) transfers, by direct debit and by credit card<sup>37</sup>.

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<sup>33</sup> Protection against unfair standard contract terms; minimum standard contract terms; equal charges regardless place of residence.

<sup>34</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Article 3 and Annex.

<sup>35</sup> Council Directive 93/13/EEC on unfair terms in consumer contracts, Article 5.

<sup>36</sup> Directive 2002/22/EC Universal Service Directive, Articles 20, 21 and 30.

<sup>37</sup> Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community, Article 3.

## Chapter 8: Protection against unfair practices<sup>38</sup>

- (1) Any consumer, including the digital consumer, has the right either to complain to the national enforcement authorities<sup>39</sup> or to take legal action against a trader in the EU that uses **unfair commercial practices**.

For example, after making an online purchase, consumers cannot be made subject to **onerous or disproportionate non-contractual** obstacles (such as filling in a large amount of forms or being asked to call a specific phone number when no one is answering the call) in order to prevent them from terminating the contract or switching to another product or trader<sup>40</sup>.

- (2) Consumers must **not be misled or exposed to aggressive marketing** and this applies also in the digital environment. Any claim made by traders in the EU has to be truthful, clear, accurate and substantiated, enabling consumers to make informed and meaningful choices<sup>41</sup>. Comparative advertising must compare goods or services meeting the same needs or intended for the same purpose and it must objectively compare material, relevant, verifiable and representative features<sup>42</sup>.

Examples of unfair commercial practices:

- a trader is not allowed to make an invitation to purchase products at a specified price if he then refuses either to take orders for them or to deliver them within a reasonable time, with the intention of promoting a different product ('bait and switch');
  - a trader is not allowed to describe a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for the delivery of the item<sup>43</sup>;
  - a consumer cannot be asked to pay for or to return unsolicited products supplied by a trader ('inertia selling').
- (3) When buying products online, including **financial services**, consumers are protected from abusive marketing practices seeking to require them to buy something they have not solicited. They are also protected against other practices, such as unsolicited phone calls and e-mails<sup>44</sup>.

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<sup>38</sup> Keywords: unfair commercial practise; disproportionate obstacle; mislead marketing; aggressive practises; abusive marketing practises.

<sup>39</sup> The list of the competent authorities is available on the following link: [http://ec.europa.eu/consumers/empowerment/cons\\_networks\\_en.htm](http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm)

<sup>40</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practises in the internal market, Article 9.

<sup>41</sup> Directive 2005/29/EC concerning unfair commercial practises, Articles 6 to 9.

<sup>42</sup> Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, Article 5.

<sup>43</sup> Directive 2005/29/EC concerning unfair commercial practises, Annex 1. Examples of unfair commercial practises.

<sup>44</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practises in the internal market, Annex I.



## Chapter 9: Delivery of goods and services without defects and in due time<sup>45</sup>

- (1) Any consumer in the EU must **receive goods or services** ordered online from a trader **within 30 days**, unless something else has been agreed with the seller. If the good or service was not delivered within this time-frame, the consumer has a right to be reimbursed<sup>46</sup>.
- (2) Consumers can request **repair or replacement free of charge** if goods they receive are faulty or do not correspond to what they have ordered. The trader has to repair or replace the good within a reasonable time and with limited inconvenience to the consumer.

If the trader fails to repair or replace the good within a reasonable time, consumers may instead ask for a **refund or a price reduction**. The legal guarantee has a duration of at least two years from delivery of the goods, but after six months the consumer has to prove that the defect already existed at the time of delivery. Within six months of delivery it is assumed that the defect existed at the time of delivery unless the seller can prove that this is not the case<sup>47</sup>.

If the manufacturer or seller grants commercial guarantees or warranties promising free repair and replacement within a certain period, an online consumer can also turn to the one offering such a guarantee.

- (3) In the EU, consumers have the right to have their online **payment transactions** treated **within strict limits** by the payment service providers. As a rule the amount of the transaction shall be credited to the payee's account no later than on a next business day. Exceptions apply to direct debit payments (they are executed on the agreed day) and payments initiated in paper form (one additional day for processing)<sup>48</sup>.
- (4) In case of an unauthorised payment transaction (e.g. mistakes of the merchant, bank or fraud attempts not related to the payer) the payer has the right to obtain an **immediate refund** of the total amount of the transaction by the payment service provider<sup>49</sup>.

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<sup>45</sup> Keywords: receipt of goods/services; repair or replacement; refund; price reduction;

<sup>46</sup> Directive 97/7/EC on the protection of consumers in respect of distance contracts, Article 7. As from 13 June 2014 this Directive will be replaced by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

<sup>47</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, Articles 3 and 5.

<sup>48</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, Article 69.

<sup>49</sup> Directive 2007/64/EC on payment services, Article 60.

## Chapter 10: Withdrawal from a contract <sup>50</sup>

- (1) Consumers in the EU have **at least seven days to change their mind** about goods or services they have ordered online from a trader. For goods, the withdrawal period starts from the date of delivery, for services in general from the date the on-line order was placed. Consumers can then withdraw from the contract without penalty and without giving any reason. Reimbursement of sums paid must be carried out as soon as possible and in any case within 30 days. The only charge that can be made to the consumer in this case is the direct cost of returning the goods<sup>51</sup>.

In the case of buying **financial services online** consumers can withdraw from the contract within 14 days without any penalty and without giving any reason<sup>52</sup>.

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<sup>50</sup> Keyword: withdrawal; change of mind without penalty; reimbursement, returning of goods.

<sup>51</sup> Directive 97/7/EC on the protection of consumers in respect of distance contracts, Article 6. As from 13 June 2014 this Directive will be replaced by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights which will extend, clarify and harmonise the rights of the consumer to withdraw from a contract.

**This right does not apply:** if the provision of a service has begun, with the consumer's agreement, before the end of the seven working day period for the exercise of the right of withdrawal; for accommodation, transport, catering or leisure services, unless the date or period of this service is open and not specified; or goods or services the price of which is dependent on fluctuations in the financial markets which cannot be controlled by the supplier; for personalised or 'tailor-made' goods; for the supply of goods which are liable to deteriorate or expire rapidly; for the supply of audio or video recordings or computer software which were unsealed by the consumer; for the supply of newspapers, periodicals and magazines; for gaming and lottery services.

<sup>52</sup> Directive 2002/65/EC concerning the distance marketing of consumer financial services, Article 6.

**This right does not apply** to financial services whose price depends on fluctuations in the financial market outside the supplier control; travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration; contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

## SECTION III

### Rights & Principles protecting you in case of conflict

#### Chapter 11: Access to justice and dispute resolution<sup>53</sup>

- (1) Everyone whose rights and freedoms that are guaranteed by European legislation, have been violated has the right to an **effective remedy before a tribunal**.

The Charter of Fundamental Rights of the European Union provides that "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article; is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law; and shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice"<sup>54</sup>. This includes consumers acceding to and using online services.

Online consumers in the EU have a right to sue and be sued in matters related to a consumer contract in a **court where the consumer is domiciled** if the trader is commercially or professionally active in, or directs such activities towards, the Member State of the consumer's domicile<sup>55</sup>.

In this situation online consumers can benefit from the protection of the laws of the country of residence. The parties may also, based on freedom of choice, apply another law, as long as it provides the same level of protection to the consumer as that of his/her country of residence<sup>56</sup>.

- (2) Consumers also have the possibility to resolve a dispute concerning an online transaction out of court through the intervention of **alternative dispute resolution entities**, where such entities exist<sup>57</sup>.

For the settlement of disputes concerning **payment transactions** in particular, online consumers have access to the special out-of-court redress procedures that exist in all Member States<sup>58</sup>.

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<sup>53</sup> Keywords: remedies before a tribunal, court of place of domicile; applicable laws; alternative dispute resolution schemes; out-of-court redress; cross-border mediation; small claims procedure.

<sup>54</sup> Charter of Fundamental Rights of the European Union, Article 47.

<sup>55</sup> Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter, Article 16.

<sup>56</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), Article 6.

<sup>57</sup> The Commission has adopted a proposal for a Directive on alternative dispute resolution ('ADR') to ensure that ADR entities are available for any contractual dispute between traders and consumers arising from the sale of goods or the provision of services in the Single Market: [http://ec.europa.eu/consumers/redress\\_cons/adr\\_policy\\_work\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm)

In the context of the Digital Agenda, an EU-wide online dispute resolution platform will be established and will be directly accessible online by consumers and traders in order to help them resolving their contractual disputes arising from online transactions through the intervention of an ADR entity: [http://ec.europa.eu/consumers/redress\\_cons/adr\\_policy\\_work\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm)

<sup>58</sup> Directive 2007/64/EC on payment services, Articles 80 and 83.

In relation to the **provision of electronic communications networks and services**, consumers must have access to transparent, non-discriminatory, simple and inexpensive **out-of-court procedures** put at their disposal by Member States for dealing with unresolved disputes with the service providers and relating to the contractual conditions and/or performance of the contract<sup>59</sup>.

- (3) **In cross-border cases** online consumers are encouraged to take recourse to a **mediation** process that will remain confidential and ensure that parties can request that the content of their settlement agreement is declared enforceable. Where an attempt to settle a dispute by mediation fails, the consumer is not prevented from initiating court proceedings due to the expiration of limitation and prescription periods<sup>60</sup>.
- (4) **In cross-border cases**, online consumers in the EU can use the European **Small Claims Procedure**<sup>61</sup>. This is a speedy and cost-efficient alternative to traditional court procedures. It is available for claims of up to € 2000 in civil and commercial cases, including online transactions. The procedure can be launched by the claimant on the basis of standard forms<sup>62</sup>.

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<sup>59</sup> Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), Article 34.

<sup>60</sup> Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

<sup>61</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

<sup>62</sup> ([http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_filling\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_en.htm))

Judgment has to be given within 30 days and the court decision can be directly enforced in the other Member States. Parties can bring the case themselves without having to be represented by a lawyer.

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