Description of Directives covered by the public consultation

B2B sphere

Misleading and Comparative Advertising Directive: prohibits misleading advertising in B2B and regulates comparative advertising

Business-to-consumer transaction

Promotion, marketing → **Conclusion of the contract** → **Performance of the contract**

Unfair Commercial Practices Directive: prohibits misleading and aggressive commercial practices by traders during the whole lifetime of a business-to-consumer transaction: marketing, entry into the contract and performance of the contract

Consumer Rights Directive: covers pre-contractual information and certain aspects of post-contract relations (contract confirmation, the right of withdrawal, delivery and passing of risk etc.)

Unfair Contract Terms Directive: prohibits unfair standard terms in contracts

Sales and Guarantees Directive: stipulates rights in case of defective goods

Price Indication Directive: requires indication of the selling price and of the unit price, including in advertising

Injunctions Directive: provides for a mechanism for enforcement of consumer protection rules in case of infringement by traders at any stage of the business to consumer transaction

Misleading and Comparative Advertising Directive (MCAD)

MCAD provides a minimum legal standard of **protection of businesses against misleading marketing**. Member States can provide in their national legislation for stricter rules to protect businesses in this area. MCAD also lays down fully harmonised uniform rules on comparative advertising, i.e. on these issues the Member States cannot enact more protective rules than provided in the Directive.

For more information: http://ec.europa.eu/consumers/consumer_rights/unfair-trade/false-advertising/index_en.htm

Unfair Commercial Practices Directive (UCPD)

UCPD applies to business-to-consumer (B2C) transactions. It applies to all **commercial practices before, during and after the transaction**, including in the online environment, and to all products, including digital ones. It provides for full harmonisation of Member States' legislation that protects consumers against unfair commercial practices harming consumers' economic interests, with the exception of the areas of financial services and immovable property.

The Directive protects consumers against unfair commercial practices of traders by:

- Providing, in Annex I, a black-list of 31 specific commercial practices which are prohibited in all circumstances;
- Prohibiting commercial practices which are considered as misleading or aggressive;
- Prohibiting unfair commercial practices that are contrary to the requirements of professional diligence.

In order to qualify as misleading, aggressive or contrary to the requirements of professional diligence, a commercial practice must cause or be likely to cause an average consumer to take a transactional decision that he/she would not have taken otherwise. This is to be assessed on a case-by-case basis by the competent national bodies.

The UCPD requires traders to provide consumers with **information** that they need to take an informed transactional decision. In addition, it provides a specific list of information requirements for the "invitation to purchase" (see section on "Consumer information requirements" for more details).

The unfairness of a commercial practice is assessed against the "**average consumer**" benchmark, which has been developed by the Court of Justice of the EU. The average consumer is "*reasonably well-informed and reasonably observant and circumspect*", taking into account social, cultural and linguistic factors. If a commercial practice is directed at a particular group of consumers then an average member of that group is the benchmark. The Directive also provides specific protection for certain groups of consumers defined as particularly **vulnerable**.

For more information: http://ec.europa.eu/consumers/consumer_rights/unfair-trade/index_en.htm

The Consumer Rights Directive (CRD)

The CRD applies to business-to-consumer (B2C) transactions. First, the CRD lays down detailed **pre-contractual information requirements**. These are fully harmonised for distance and off-premises contracts whereas the requirements for on-premises sales (sales in brick-and-mortar shops) are of a minimum nature (see next section on "Consumer information requirements" for more details).

In addition, the CRD lays down a series of fully harmonised requirements for the **conclusion and confirmation of distance and off-premises contracts**. In particular, it regulates the consumer's right to withdraw from distance and off-premises contracts (contracts concluded outside business premises). The period during which consumers can withdraw from a distance or off-premises contract is 14 calendar days from the delivery of goods or from the conclusion of the service contract. Traders must, within 14 days of the withdrawal, reimburse all consumers' payments received. This includes the costs of delivery. Traders can withhold reimbursement only until the moment when they received the goods back or when the consumer has supplied evidence of having sent the goods back. Regarding contracts for the online provision of digital content, e.g. downloading of software or streaming a movie, where the content is supplied immediately, the CRD requires traders to request consumer's prior express consent to begin the performance and acknowledgement that he/she loses the right of withdrawal when the performance (i.e. downloading or streaming of the content) begins.

The CRD also lays down rules on **delivery of goods and passing of risk**. Traders must deliver the goods within 30 days from the conclusion of the contract if not agreed otherwise. In general, the trader will bear the risk for any damage to goods during transportation until the consumer takes physical possession of the goods.

The CRD limits any additional costs imposed on the consumer for the **use of a means of payment**. It prohibits the use of default settings ("pre-ticked boxes") for charging **additional payments** without consumer's express consent. It also limits the **costs for telephone communications** with a trader in relation to the contract concluded. In such cases, the consumer cannot be bound to pay more than the basic phone rate.

For more information: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

Consumer information requirements

Consumer information requirements are laid down in the Unfair Commercial Practices Directive (UCPD), the Price Indication Directive (PID) and the Consumer Rights Directive (CRD).

The UCPD generally requires traders to provide consumers with **information that consumers need to take an informed transactional decision**. In addition, whenever a commercial communication includes a description of a product and its price, e.g. in an advertisement, the trader is specifically required to provide information, subject to the limitations of the communication medium used, about:

- the main characteristics of the product,
- trader's identity and address,
- full price,
- the existence of the right of withdrawal (where applicable),
- arrangements for payment, delivery, performance and complaint handling policy (if such arrangements depart from the requirements of professional diligence).

At the **pre-contractual stage of a transaction**, e.g. when the consumer visits a brick-and-mortar shop or looks at the product descriptions in an online shop, traders must comply with the information requirements under the CRD. These pre-contractual information requirements are more comprehensive and they include all the above-mentioned information requirements under the UCPD. For example, the CRD provides detailed information requirements about the right of withdrawal from distance and off-premises contracts and about the functionality and interoperability of digital content.

The Price Indication Directive (PID) requires traders to indicate the **selling price** and the **price per unit** of measurement of products offered to consumers, both at the marketing and pre-contractual stages. The objective of this Directive is to improve consumer information and to facilitate comparison of prices. The PID provides for minimum rules and it also includes regulatory options for Member States to derogate from its requirements, in particular the option to exempt small businesses from the obligation to indicate the unit price.

Additional consumer information requirements are laid down in the **e-Commerce Directive** and **the Services Directive**. These information requirements partly overlap with those under the CRD and the UCPD, but they also include several additional elements (e.g. information about the trader's number in a trade or other public register, VAT number, relevant professional bodies, measures taken by trader to avoid conflicts of interest and the relevant supervisory authorities.)

Furthermore, numerous specific information requirements are laid down in **the sectorial EU legislation**, for example, in electronic communications, passenger transport, energy, environment, consumer financial services.

Unfair Contract Terms Directive (UCTD)

The UCTD applies to business-to-consumer (B2C) transactions. UCTD protects consumers against the use by traders of standard (not individually negotiated) contract terms which, contrary to the requirement of good faith, create a significant imbalance in the parties' rights and obligations to the detriment of the consumer (**general (un-)fairness clause**). Such unfair terms are not binding on the consumer but the contract continues to exist if it is capable to exist without the unfair terms.

In addition, the Directive requires written contract terms to be drafted in **plain and intelligible language**. Contract terms whose meaning is unclear must be interpreted as favourably as possible for the consumer, and contract terms which are not transparent and do not allow consumers to understand their rights and obligations under the contract may be considered as unfair.

UCTD applies to both online and offline environments, and to all products, including digital content. It contains an **indicative and non-exhaustive list of standard terms** that may be considered as unfair.

UCTD is a minimum harmonisation instrument and Member States can provide in their national legislation for stricter consumer protection rules. Many of them have used this possibility by, for example, introducing "black lists" of unfair terms (contract terms considered unfair in all circumstances) and/or "grey" lists of contract terms (terms presumed to be unfair unless proven to the contrary).

For more information: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/unfair-contract/index_en.htm

Consumer Sales and Guarantees Directive (CSGD)

The CSGD applies to business-to-consumer (B2C) transactions. The Directive applies to the sale of tangible goods, both new and second-hand, and regardless of the sales channel. The CSGD lays down the rules on the conformity of the goods with the contract. It provides that the seller is liable for the lack of conformity (defects) that existed at the time of delivery and becomes apparent within **two years** from delivery (i.e. within the so called "**legal guarantee**" period).

If the defect becomes apparent during the first **six months** from delivery it is for the trader to prove that it did not exist at the time of delivery (**reversal of the burden of proof**).

Where the seller is liable under the Directive, the consumer has the right to free-of-charge **remedies** – repair or replacement as first-tier remedies and price reduction or rescission of the contract as second-tier remedies, i.e. it provides for a hierarchy of remedies. The Directive also has rules to ensure that consumers benefit from any voluntarily offered guarantees (so called "commercial guarantees"), namely that they are binding on the trader who offers them.

The Directive includes options for Member States to impose an obligation on consumers to notify a defect within two months from its discovery and to reduce the legal guarantees period for second-hand goods to one year.

It is a minimum harmonisation directive, allowing Member States to provide for more stringent consumer protection measures. Several Member States have used this possibility by, for example, introducing more favourable rules for consumers regarding the duration of the legal guarantee period or an extended period for the reversal of the burden of proof.

The Commission has recently proposed **to replace the CSGD, as regards online and other distance sales** (e.g. sales by telephone or mail order), by a new Directive, which is currently being negotiated by EU co-legislators. The main features of the new Commission proposal for online and other distance sales are:

- full harmonisation (i.e. no possibility to impose stronger consumer protection requirements);
- retaining the two-year legal guarantee period;
- extension of the period for the reversal of the burden of proof to two years (i.e. throughout the legal guarantee period the seller has to prove that the defect did not exist at the time of delivery);
- maintaining a hierarchy of remedies, i.e. repair or replacement as first-tier remedies and price reduction or rescission of the contract (refund) as second-tier remedies;

Whilst recognising the need to act quickly on the digital dimension of the Single Market, the Commission has committed to take steps to align the rules on distance and face-to-face sales.

For more information:

http://ec.europa.eu/consumers/consumer_rights/rights-contracts/sales-guarantee/index_en.htm

http://ec.europa.eu/justice/contract/digital-contract-rules/index_en.htm

Enforcement including injunctions

The **Injunctions Directive** imposes on Member States the obligation to enable qualified entities (civil society organisations and/or public bodies) to seek an injunction in front of a court or of an administrative authority to stop an act contrary to the EU consumer laws (as listed in the Annex to the Directive and as transposed into national law), which harms the collective interests of consumers. Accordingly, the Injunctions Directive provides for a tool of enforcement of the consumers' rights granted, among others, by the Unfair Commercial Practices Directive, the Sales and Guarantees Directive, the Unfair Contract Terms Directive and the Consumer Rights Directive. It also facilitates the use of injunctions in a cross-border context.

The **Unfair Commercial Practices Directive** requires Member States to ensure that there are means available to combat unfair commercial practices in order to enforce compliance with its provisions. In particular, the Directive specifically requires a possibility for persons or organisations to take legal action (i.e. court action) against the commercial practice or to bring the case before an administrative authority that is either competent to make a decision on complaints or to initiate legal proceedings. The Directive does not, however, harmonise the above procedures.

The **Consumer Rights Directive** requires Member States to ensure that adequate and effective means exist to ensure compliance with this Directive. The Directive provides for individual remedies for the consumer where the trader breaches its obligations, e.g. the online seller has to bear the costs of returning the goods in the context of the right of withdrawal where he failed to inform the consumer about the consumer's duty to bear those costs. As regards other breaches of its provisions, the Directive does not include specific rules on individual redress.

The **Unfair Contract Terms Directive** (UCTD) requires Member States to ensure that there are means available to prevent the continued use of unfair contract terms. The Directive specifically requires that there must be the possibility for persons or organisations to take action before courts or before an administrative authority for a decision on unfairness of contract terms and imposition of means to prevent their continued use. The details of such actions are, however, not harmonised by the Directive. UCTD also does not include any specific rule on the procedure of individual redress, i.e. an individual remedy for an individual consumer. Such rules of procedures are provided in national laws.

For more information: http://ec.europa.eu/consumers/enforcement/injunctions/index_en.htm