

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of the Consumer Rights Directive 2011/83/EU		
LEAD DG – RESPONSIBLE UNIT	DG JUST, UNIT E2	DATE OF THIS ROADMAP	25/04/2016
TYPE OF EVALUATION	Evaluation of the Directive	PLANNED START DATE	Q1 / 2016
		PLANNED COMPLETION DATE	Q1 / 2017
		PLANNING CALENDAR	<a href="http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm">http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm</a>
<b>This indicative roadmap is provided for information purposes only and is subject to change.</b>			

A. Purpose
(A.1) Purpose
<p>The Directive on Consumer Rights (2011/83/EC) (hereafter 'the Directive' or 'the Consumer Rights Directive') had to be transposed into the national laws of the Member States by 13 December 2013, with a view to become applicable in all EU Member States by 13 June 2014.</p> <p>The Consumer Rights Directive repealed Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 85/577/EEC to protect consumer in respect of contracts negotiated away from business premises, by fully harmonising rules applying to on-line and off-premises purchases of goods and services (e-commerce) as well as to the provision of digital content (see also below under B1 'Subject area).</p> <p>At the same time, its scope is limited to only certain aspects of consumer contracts. This is why, when announcing the key ten policy areas to be tackled under the European Commission's Agenda for Jobs, Growth, Fairness and Democratic Change, President Juncker stressed amongst others the need to even further modernise and simplify consumer rules for distance sales and digital purchases<sup>1</sup>.</p> <p>Out of the priority actions announced in the subsequently adopted 'Digital Single Market' (DSM) Strategy<sup>2</sup>, the Consumer Rights Directive is particularly relevant<sup>3</sup> in relation to the geo-blocking</p>

<sup>1</sup> A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. [Political Guidelines](#) for the next European Commission, Strasbourg, 15 July 2014.

<sup>2</sup> Commission Communication "A Digital Single Market Strategy for Europe", Brussels, 6.5.2015, [COM\(2015\) 192 final](#)

<sup>3</sup> The Consumer Rights Directive provides for certain consumer protection rules in these areas: Article 8(3) of the Directive provides trader's obligation to display on the website at the latest at the beginning of the ordering process any delivery restrictions; with respect to digital content the Directive provides for a clear set of pre-contractual information requirements and also lays down the right of withdrawal.

initiative<sup>4</sup> as well as to the proposals<sup>5</sup> to further harmonise consumer contract rules on remedies for e-commerce and digital content transactions. so as to unleash the full DSM potential.

The evaluation of the Consumer Rights Directive aims to assess its overall impact on the internal market, by assessing its relevance, coherence, efficiency, effectiveness and European added value.

#### (A.2) Justification

The Consumer Rights Directive was expected to apply across the EU on 13 June 2014. However, delays in transposition occurred in some Member States. Therefore, the Directive was applicable in all 28 Member States only as from the end of 2014.

According to its Article 30, a report on the application of the Directive is to be delivered by 13 December 2016. While the Directive has been applicable in all the EU Member States for a shorter time than that originally foreseen by the co-legislators, the Commission considers it nevertheless appropriate to carry out an overall evaluation on its functioning, which can usefully feed into the ongoing, broader assessment of the European consumer and marketing law *acquis*<sup>6</sup>. The evaluation report on the Consumer Rights Directive is planned for adoption in the first quarter of 2017.

The Fitness Check carried out in parallel will, in particular, look into key EU Directives in the area of consumer and marketing law, i.e.:

- Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive);
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Sales and Guarantees Directive);
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);
- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (Price Indication Directive);
- Directive 2006/114/EC concerning misleading and comparative advertising (Misleading and Comparative Advertising Directive), and
- Directive 2009/22/EC on injunctions for the protection of consumers' interests (Injunctions Directive).

The aim of the Fitness Check is to evaluate the consumer and marketing law *acquis*, identify possible gaps, overlaps and redundancies and ensure that this regulatory framework is fit for its purpose, so as to contribute into unleashing the full potential of the Single Market.

As announced in the Roadmap for the REFIT Fitness check of consumer law<sup>7</sup>, the outcome of this separate evaluation of the Consumer Rights Directive will feed into the conclusions of the Fitness Check.

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<sup>4</sup> Geo-blocking understood as barriers and restrictions imposed on consumers on the base of their nationality or place of residence; geo-blocking initiative website: <https://ec.europa.eu/digital-agenda/en/geo-blocking-digital-single-market>, First brief results of the public consultation on geo-blocking were published on 27 January 2016

<sup>5</sup> [COM \(2015\) 634](#) final and [COM \(2015\) 635](#) final

<sup>6</sup> [http://ec.europa.eu/consumers/consumer\\_rights/review/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm)

<sup>7</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2016\\_just\\_023\\_evaluation\\_consumer\\_law\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_just_023_evaluation_consumer_law_en.pdf)

## B. Content and subject of the evaluation

### (B.1) Subject area

The Directive is a horizontal piece of legislation which regulates some aspects of distance, off-premises and on-premises contracts between consumers and businesses. It covers contracts for the purchase of goods, services, digital content not supplied on a tangible medium and supply of public utilities. Nevertheless, some contracts are excluded from the scope of the Directive (e.g. contracts concerning social services, healthcare, gambling, immovable property, financial services, package travel, timeshare, supply of foodstuffs or – except for some specific provisions - passenger transport).

The Directive provides that consumers must receive complete and transparent information about key contractual elements, formal requirements for distance and off-premises contracts, a right for consumers to withdraw from distance and off-premises contracts, clear rules on delivery of goods and passing of risk and some specific provisions regarding fees for the use of means of payments, communication by telephone between consumers and traders and rules regarding additional payments.

The Directive generally has a full harmonisation character, meaning that national provisions transposing it may not go below or beyond its provisions. However, the Directive specifically allows Member States to impose additional pre-contractual information requirements for on-premises contracts. In addition, it gives Member States the possibility to apply certain regulatory choices under their own national law.

### (B.2) Original objectives of the intervention

The overall objective 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. The Directive aims to stimulate cross-border competition thus providing consumers with a wider range of goods and services at lower prices. The Directive aims to reduce business reluctance to trade cross-border by decreasing administrative and compliance costs and to increase legal certainty by eliminating regulatory fragmentation. At the same time the Directive aims at enhancing consumer confidence in the internal market by providing consumers with a uniform level of protection when they shop cross-border.

Before the adoption of the Directive surveys showed that, for most traders, compliance costs constituted an important barrier to cross-border trade which reduced their incentive to sell cross-border, particularly to consumers in small Member States. The majority of respondents to the Green Paper consultation carried out in 2007 called for the adoption of a horizontal legislative instrument applicable to domestic and cross-border transactions, based on full targeted harmonisation.

### (B.3) How the objectives were to be achieved

The objectives of the Consumer Rights Directive were to be achieved by a comprehensive legislative instrument, which streamlines in a coherent manner the protection of European consumers for off-premises, distance contracts as well as on-premises contracts.

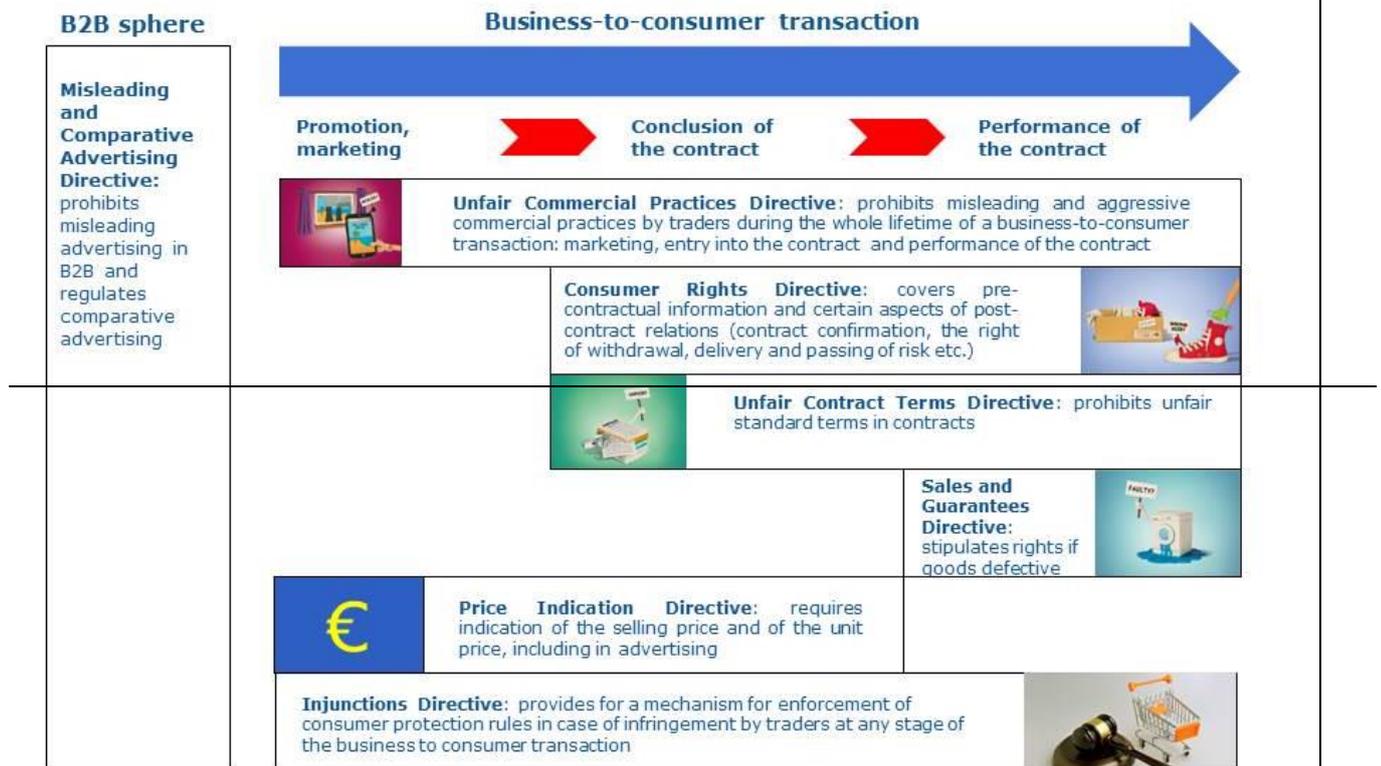
The Directive has also for the first time laid down some specific rules at the EU level on digital content, namely specific requirements regarding pre-contractual information and the right of withdrawal.

Consequently, it was expected that the Directive would remove barriers to the Single Market and facilitate cross-border transactions by ensuring a harmonised contractual regime for businesses and

the same rights for consumers across the EU. This should result in traders being encouraged to develop their business cross-border and consumers being able to benefit from extended choice and potentially lower prices.

The Consumer Rights Directive is designed to contribute to achieving the overall objectives of high consumer protection and proper functioning of the internal market by regulating the pre-contractual and the contractual stages of business to consumer relations, in particular by fully harmonising pre-contractual information requirement for distance and off-premises contracts, formal requirements for the conclusion of such contracts as well as the right of withdrawal regarding these contracts and clear rules for delivery of goods and passing of risk from the trader to the consumer of loss of or damage to the goods.

The following diagram illustrates how the Consumer Rights Directive interacts with the other consumer and marketing law Directives currently subject to the wider Fitness check evaluation.



At the pre-contractual stage, together with the Price Indication Directive and the Unfair Commercial Practice Directive, the Consumer Rights Directive aims at completing the information provided to the consumer by laying down the list of detailed pre-contractual information requirements for off-premises, distance and on-premises contracts.

Then, during the conclusion of the contract, the Consumer Rights Directive protects the consumer by laying down formal requirements for distance and off-premises contracts.

At the post-contractual stage, it further provides the consumer with certain additional rights, such as the right of withdrawal for distance and off-premises contracts and clear rules for delivery of goods and passing of risk. At this stage, the Directive interacts with the Unfair Commercial Practices Directive, the Consumer Sales and Guarantees Directive, the Unfair Contract Terms Directive.

The evaluation will base its conclusions on the findings of a study carried out by an external contractor. The contractor will, among others, use as sources of information desk research, interaction with the stakeholders (i.e. surveys, interviews and public consultation) and data gathering exercises (i.e. the sweep carried out by national authorities, behavioural experiment).

(C.1) Topics covered

The evaluation will cover the Directive in its entirety. The evaluation will assess whether the objectives of the Directive have been achieved and whether anticipated impacts as described in the original Impact assessment accompanying the proposal for the Directive have materialised.

The evaluation should focus on the effects of the new or modified rules introduced by the Consumer Rights Directive since its entry into application in 2014. Such assessment should take into account the impact of the Directive on:

- businesses (i.e. by measuring the burden for businesses arising from obligations stemming from the Directive, their corresponding administrative costs, possible improved competition and reduced compliance costs);
- consumers (i.e. by quantifying the benefits stemming from consumer rights laid down in the Directive such as achieving higher consumer protection, extended choice of products and potentially lower prices);
- on cross-border trade (i.e. whether full harmonisation has led to removal of barriers to cross-border trade and quantifying the benefits such as increased trade stemming from such removal of barriers)
- on national trade (in addition, in order to deliver a complete overview of the economic consequences produced by the Directive, the evaluation should measure additional costs or benefits that regulatory measures imply for economic actors operating solely at the national level).

The above-mentioned analysis should be carried out not only regarding the fully harmonised provisions but also regarding the different national measures applied by Member States as a result of the use of regulatory options allowed the Directive. Thus, the evaluation will enable the Commission to properly assess to what extent the Directive has fulfilled its objectives and whether further changes might be necessary. The evaluation will cover the period since the beginning of the application of the Directive and will cover all EU Member States.

(C.2) Issues to be examined

The evaluation will assess how the provisions of the Consumer Rights Directive have performed in relation to key aspects of policy making, such as relevance, effectiveness, efficiency, coherence and European added value.

These effects should be assessed in relation to all the Directive's provisions with particular focus on the following key ones:

- a. The pre-contractual information requirements for on-premises contracts laid down by Article 5(1) in conjunction with the additional pre-contractual information requirements introduced by the Member States in line with Article 5(4);
- b. The pre-contractual information requirements for distance and off-premises contracts (Article 6(1));
- c. The specific provisions on digital content;
- d. The formal requirements for distance and off-premises contracts;
- e. The fully harmonised period for the right of withdrawal for distance and off-premises contracts;
- f. The exceptions from the right of withdrawal (Art. 16);
- g. The new rules on delivery and passing of risk;

- h. The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Article 21);
- i. The requirement to eliminate unjustified surcharges for the use of means of payments (Article 19). Particular attention should be given to the application of this provision by the national enforcement authorities. Importantly, this provision (along with Articles 8(2) and 22) applies also to the passenger transport services sector;
- j. The provision banning pre-ticked boxes (Article 22). This Article foresees the obligation for the trader to 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;
- k. The provision on inertia selling (Article 27) – the consumer is not obliged to pay for any unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services.

It is important to define whether the Directive has reduced the regulatory costs and burdens for businesses while guaranteeing a high level of consumer protection. Moreover, it is relevant to understand to which extent the interaction between the Consumer Rights Directive and other relevant consumer acquis, has ensured the achievement of a streamlined regulatory framework for business-to-consumer transactions, without generating overlaps or duplications.

Therefore, the evaluation should address the following questions:

- **Relevance**

Do the objectives of Directive 2011/83/EU as described above (still) correspond to the needs within the EU? To what extent has the Directive proved relevant to the needs, also described above, which were at the basis of its adoption?

- **Effectiveness**

To what extent do the effects of Directive 2011/83/EU correspond to the objectives? To what extent have the objectives been met? Where expectations have not been met, what factors have hindered their achievement?

- **Efficiency**

Were the outputs and effects achieved at a reasonable cost? Could the same results have been achieved with lower costs or in a simpler way? Could the use of other policy instruments or mechanisms have provided better cost-effectiveness? What possibilities are there for simplification?

- **Coherence**

How well does Directive 2011/83/EU work together with other EU consumer law instruments which have similar objectives?

To what extent has Directive 2011/83/EU proved complementary to other Member States measures in the relevant areas and markets?

- **European Added Value**

What is the additional value resulting from Directive 2011/83/EU, compared to what could be achieved by Member States at national and/or regional levels?

The tasks foreseen by the evaluation encompass legal, economic and statistical analysis, along with the consultation of relevant stakeholders.

The legal analysis will consist in examining national legislations, guidance documents issued by Member States, existing studies and enforcement decisions.

The statistical analysis will consist in examining data of complaints collected by European Consumer Centres (ECCs) and national enforcers including results obtained in the framework of the recent sweep on the Consumer Rights Directive.

The consultation will consist in a questionnaire addressed to representative samples of key stakeholders (i.e. all national enforcers and ministries, representative sample of businesses and consumers). A number of face-to-face interviews with consumers, traders and associations will be also foreseen. In addition, other interested stakeholders will be able to provide their opinion on the Consumer Rights Directive by participating to the online public consultation on the consumer protection acquis, which will be launched in early 2016.

Moreover, the evaluation will assess the changes in the consumer experience introduced by the Directive. Such task will be performed on the basis of the results gathered through a mystery shopping exercise and a consumer behavioural experiment.

#### **D. Evidence base**

##### (D.1) Evidence from monitoring

The evaluation will represent the first monitoring activity for this relatively recent piece of legislation (i.e. adopted in 2011 and applicable in the Member States as of 13 June 2014). Thus, the statistical results and legal conclusions drawn from this evaluation will allow policy-makers to decide whether the Directive has fulfilled its objectives.

##### (D.2) Previous evaluations and other reports

Impact Assessment Report accompanying the Commission proposal for a directive on consumer rights (COMMISSION STAFF WORKING DOCUMENT) of 2008<sup>8</sup>

##### (D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

In 2015, the European Commission launched a horizontal transposition check of national legislations of the EU Member States transposing the Consumer Rights Directive. The results of this exercise will feed into this evaluation.

In accordance with Article 29 of the Consumer Rights Directive, Member States notified to the Commission their regulatory options which have been published on the DG Justice website<sup>9</sup>.

To ensure a comprehensive analysis, the evaluation should also take into account the Commission experience (complaints received, pre-infringement and infringement proceedings) regarding the transposition and implementation of the Directive by Member States. The results of the Sweep carried out by national enforcers will also be taken into account.

<sup>8</sup> SEC (2008) 2544 [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2008/sec\\_2008\\_2544\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2008/sec_2008_2544_en.pdf)

<sup>9</sup> [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/transposition\\_list\\_crd\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/transposition_list_crd_en.htm)

The consumer complaints (CHAP cases) received by the Commission and the ECCs in the area of pre-contractual information and post-sale obligations for distance, off-premises and on-premises contracts, the tendencies and main issues raised in such complaints will also be analysed.

#### (D.4) Consultation

The consultation activities include:

- Online public consultation of 12 weeks in order to provide an opportunity for the public to participate in the evaluation;
- Targeted consultation of representative organisations (Member States authorities, businesses and consumer and industry organisations) – via surveys and interviews performed by the Commission's external contractor;

Moreover, the preliminary results of the study carried out to support this evaluation will be presented to the relevant stakeholders at the 2016 Consumer Summit.

#### (D.5) Further evidence to be gathered

Comprehensive information on the Consumer Rights Directive will be gathered through a study carried out by an external contractor in 2016.

### **E. Other relevant information/ remarks**