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Holger Buck

**CURRENT STATUS OF CONSUMER
LAW WITHIN EUROPEAN UNION**

Introduction

“Before you play the game learn the rules! [...] All marketers should be aware of the major regulations that affect their activities” (Boone, Kurtz, 2006, p. 48).

Any marketing and distribution business should carefully observe its legal environment (especially business law with elements such as advertising law, law regarding unfair competition, IP and copyright law, cartel law, and be inclusive of benefits of the EU’s free movement of goods and services). The legal environment of that important sector of the EU economy includes a field of law which a considerable number of entrepreneurs is not fond of but nevertheless has to comply with: consumer law. As EU law has become an integral source of the law of any Member State, and as therefore each Member State has two legal systems with which to contend (Davies, 2007, p. 75), business people active in the EU must not only have knowledge of the national law but should also well be aware of all the legal provisions of the EU which touch their business actions even if they only penetrate a national market and not the internal market.

Since the 1985 assessment of the first consumer protection program established in 1975 the European Commission has treated consumer protection as an integral and indispensable part of EU policy, leading to the improvement of citizens’ welfare as one of its main objectives (Macierzyńska-Franaszczyk, 2007; Köndgen, Borges, 2005, p. 140). The goal of the EU’s ambitious and ample consumer protection policy over the past decades is to have a high level of consumer protection (Art. 12, 114(3) and 169 Treaty on the Functioning of the European Union).

“In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests”.

Figure 1. Wording of art. 169(1) Treaty on the Functioning of the European Union – TFEU

Source: Prior to the Treaty of Lisbon: 153 EC Treaty; prior to the Treaty of Amsterdam: art. 129a, consolidated version: Official Journal of the European Union C 115 of 9 May 2008, p. 47, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>.

Consumer protection embraces both the protection of consumers' individual (contractual) rights, e.g. by granting rights of withdrawal, and their collective (economic and social) interests, e.g. by empowering consumer organizations to exercise rights of civil action. Consumer protection law is led by the assumption that the consumer is the weaker economic part (Kilian, 2010, p. 44). Typically, B-to-C contracts show an imbalance between the entrepreneur as the stronger party and the consumer. Regulation (EC) No 44/2001 (see Table 1) expressly mentions the "weaker party" (recital 9). In consumer contracts, traders and suppliers of services possess a notable advantage by defining the terms *ex parte* (EC, 2011a). Over the years and using increased legislative power the EU has considerably extended the provisions of EU law regarding consumers. This article provides an analysis of EU law regarding consumer protection and reflects upon the impact of changing consumer behavior with regard to consumer law.

1. Consumer behavior and consumer protection law

Legislation has the task of evaluating the current legal system, should envisage changes in the markets or the appearance of new products or services on the market and should at least respond to identified regulatory gaps. Because new products aiming to circumvent EU's consumer protection in the field of time-share contracts have appeared on the market, the legislator replaced Directive 94/47/EC in 2008 (see Table 1), and due to the fact that types of credits and new credit instruments have evolved considerably Directive 2008/48/EC repealed the former version of 1987 (see Table 1; Pisuliński, 2010, p. 315).

However, the law reacts with regard to changing consumer attitudes as well. The change of the afore mentioned consumer credit Directive was driven secondly by the fact that consumers had used new types of credits and that they had concluded transborder consumer credit contracts with banks abroad (see recital 5 of Directive 2008/48/EC). Since citizens' mobility and their spending on travel and holidays have grown constantly, in recent years the EU has developed a new field of consumer law: i.e. passengers' rights (see Table 2; Buck, 2011). There is an increasing trend of consumers changing their method of booking their holidays by putting together the components of their holidays themselves using internet-based dynamic packaging rather than booking pre-arranged packages sold by travel agents. This results in the loss of consumer's protection by means of the relevant national provisions according to the Package Travel Directive (see Table 2) since the current Distance Selling Directive (see Table 1) excludes

accommodation, transport, catering and leisure services (art. 3(2)). It is estimated that within the UK less than half of the passengers on leisure flights are protected whereas in 1997 98% of this group was protected (EC, 2011b). Therefore, the law is under review (EC, 2007, p. 6; Schulte-Nölke, 2010, p. 133). Furthermore some legal provisions explicitly take consumer behavior into account. Directive (EC) 2005/29 (see Table 1) expressly prohibits distortion of consumers' economic behavior (recital 11 and 13, art. 2(e)).

2. The concept of the “consumer”

Those here protected are consumers as individuals and as a group of market participants. The benchmark is the “average consumer who is reasonably well-informed and reasonably observant and circumspect” (Court of Justice of the European Union, the judgment of 16 July 1998, ruling, C-210/9 – Gut Springenheide; judgment of 16 September 2004, para. 24, C-329/02 P – SAT 2; judgments online: http://curia.europa.eu/jcms/jcms/j_6/). The average consumer test is not a statistical test. Rather the reaction of the described average consumer has to be regarded in each given case.

3. Directives directly regulating the position of consumers

EU consumer law forms a patchwork of legislative measures (Schulte-Nölke, 2010, p. 132) composed by directives and regulations.

Apart from the Treaties (so-called primary source of law) EU law mainly consists of two distinct tools, i.e. regulations and directives (secondary source of law/secondary legislation). A regulation is fully effective throughout the EU, takes effect automatically in each Member State and achieves uniformity of law within all EU Member States. In contrast, a directive is not directly applicable, has to be transposed into national law by the appropriate national legislator and in the end leads to a (minimum, partial or full) harmonization/approximation of the law of the Member States in the respective field (Davies, 2007, p. 49f).

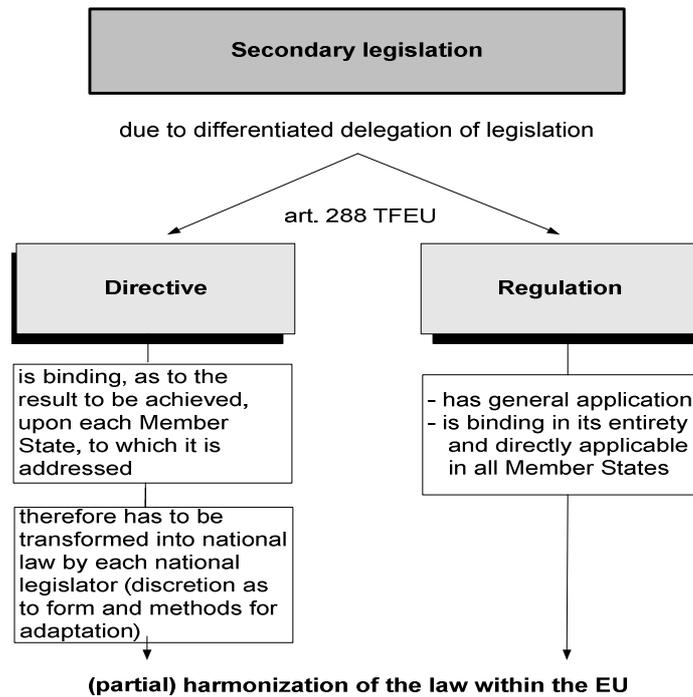


Figure 2. Secondary legislation of the EU

The following table lists (in chronological order) twelve consumer protection directives and two regulations that include the most important parts of consumer protection law. They are of specific interest to marketers and merchants. The list characterizes their aims and content. There is an easy and direct access to these legal instruments provided by the website Eur-Lex (<http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>). When available, consolidated versions and online access to them are mentioned, too. It should be clarified that after the merger of the EU with the EC as of 1 December 2009 by virtue of the Treaty of Lisbon (see art. 1(3)(3) of the Treaty on European Union: “The Union shall replace and succeed the European Community”) the naming of former EC law remains unchanged in use. Tourism and travel related law is analyzed below (Table 2).

Table 1

EU consumer protection legislation excluding passengers' rights and holiday and travel related law

No	Subject	Aim (-)/content (*)	Title of legal instrument	Published in OJ (Official Journal of the European Union)
1	2	3	4	5
1	Product liability	<ul style="list-style-type: none"> - consumer protection and a level playing field for businesses • direct (and strict) liability of the manufacturer/importer for damage caused by a defective product (death, personal injury or damage to or destruction of any item of property other than the defective product itself) • right of the victim to pursue civil remedies 	Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (as amended)	OJ L 210, 7.8.1985, p. 29 consolidated version: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0374:19990604:DE:PDF
2	Doorstep selling	<ul style="list-style-type: none"> - to protect the consumer regarding a contract concluded away from the business premises of the trader and initiated by the trader for which the consumer is unprepared or which he/she does not expect (surprise element) • granting of a period of reflection to the consumer • right of withdrawal or of return • obligation of the trader to inform the consumer about his/her rights 	Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises	OJ L 372, 31.12.1985, p. 31
3	Consumer credit	<ul style="list-style-type: none"> - to ensure consumer confidence (by full transparency) - to enable consumers to compare different offers - to enable consumers to make their decisions in full knowledge of all relevant facts • covering consumer credit agreements not ensured by real estate or financing property rights in land • provisions on advertising • obligation to provide extensive information (e.g. the annual percentage rate) prior to the conclusion of the contract and within the contract • right of withdrawal within a period of reflection • right to early repayment of the credit 	Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, replaced by: Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC	OJ L 42, 12.2.1987, p. 48, replacement: OJ L 133, 22.5.2008, p. 66

Table 1 (continued)

1	2	3	4	5
4	Unfair terms in consumer contracts	<p>- to prevent significant imbalances in the rights and obligations of consumers imposed by pre-formulated standard contract terms to the detriment of the consumer</p> <ul style="list-style-type: none"> • requirement that standard contract terms are drafted in plain, intelligible language • introduction of a notion of “good faith” supplemented by a list of terms being regarded as unfair 	Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	OJ L 95, 21.4.1993, p. 29
5	Distance selling	<p>- to protect consumers purchasing goods or services from a supplier running a distance-selling scheme through distance communication means (no face to face contact)</p> <ul style="list-style-type: none"> • provision of comprehensive information prior to the purchase • protection from unsolicited selling and fraudulent use of payment cards • withdrawal right within a period of reflection • right to a refund after withdrawal 	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 (as amended)	OJ L 144, 4.6.1977, p. 19 consolidated version: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997L0007:20071225:EN:PDF
6	Indication of prices of products offered to consumers	<p>- to improve consumer information and to facilitate price comparison</p> <ul style="list-style-type: none"> • obligation to indicate the selling price per unit of measurement on products and in advertisements mentioning the selling price (clear and legible information) 	Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers	OJ L 80, 18.3.1998, p. 27
7	Actions for an injunction for the protection of collective interests of consumers	<p>- to terminate infringements harmful to the collective interests of consumers in good time</p> <ul style="list-style-type: none"> • implementation of rules on proceedings commenced by consumer organizations against infringements 	Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests	OJ L 166, 11.6.1998, p. 51
8	Sale of consumer goods and associated guarantees	<p>- to ensure a uniform minimum level of consumer protection</p> <ul style="list-style-type: none"> • duty of the seller to deliver goods which are in conformity with the contract • liability of the seller for any lack of conformity which exists at the time the goods were delivered 	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	OJ L 171, 7.7.1999, p. 12

Table 1 (continued)

1	2	3	4	5
		<ul style="list-style-type: none"> • liability of the seller where the lack of conformity becomes apparent within two years from delivery • in the case of a lack of conformity right of the consumer to have the goods brought into conformity free of charge a) by repair or b) replacement or c) to have an appropriate reduction made in the price or d) the contract rescinded • a guarantee if issued shall be legally binding and contain comprehensive information 		
9	E-commerce	<ul style="list-style-type: none"> - to ensure legal certainty and consumer confidence - to create a clear framework for certain legal aspects - to remove barriers from cross-border services • duty of the service provider to render easily, directly and permanently accessible information a) to make him identifiable, b) about the different technical steps to follow to conclude the contract and c) about the technical means for identifying and correcting input errors prior to the placing of the order • duty of the service provider to acknowledge the receipt of the order without undue delay and by electronic means • validity of a contract concluded by electronic means 	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)	OJ L 178, 17.7.2000, p. 1
10	Jurisdiction in civil matters	<ul style="list-style-type: none"> - to protect the consumer by rules of jurisdiction • jurisdiction of the court for the place where the consumer is domiciled 	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (as amended)	OJ L 12, 16.1.2001, p. 1 consolidated version: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0044:20100514:EN:PDF
11	Distance marketing of financial services	<ul style="list-style-type: none"> - to protect the consumer negotiating or concluding a contract for retail financial services (banking, insurance, payment and investment services, including pension funds) 	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	OJ L 271, 9.10.2002, p. 16

Table 1 (continued)

1	2	3	4	5
		<ul style="list-style-type: none"> • duty of the supplier to transmit a draft contract including all terms of the contract to the consumer in writing or on a durable medium • granting of a period of reflection • right of withdrawal 		
12	Unfair B-to-C commercial practices	<ul style="list-style-type: none"> - to protect against unfair commercial practices which directly harm consumers' economic interests • imposing a list of 30 B-2-C business practices which are considered unfair under all circumstances 	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council	OJ L 149, 11.6.2005, p. 22
13	Services in the internal market	<ul style="list-style-type: none"> - to strengthen consumers' rights as service users - to improve the quality of services both for consumers and businesses • right of the consumer to obtain information on the rules applicable to the provider and on the services 	Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market	OJ L 376, 27.12.2006, p. 36
14	Conflict of laws rules (law applicable to contractual obligations)	<ul style="list-style-type: none"> - to protect the consumer by such rules of the country of his/her habitual residence that cannot be derogated from by agreement • application of the law of the country where the consumer has his/her habitual residence provided that the trader a) pursues his commercial activities in the country where the consumer has his habitual residence, or b) by any means, directs such activities to that country, and c) that the contract falls within the scope of such activities • prohibition of a choice of law having the result of depriving the consumer of protection 	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)	OJ L 177, 4.7.2008, p. 6

4. Specific consumer protection within the travel and tourism sector

As recital No 1 of Regulation (EC) No 261/2004 and recital No 1 of Regulation (EC) No 2111/2005 expressly state the purpose of the legal provisions in this field of the law is – identical with consumer protection in general – “a high level of protection”. Passengers very often travel as consumers. The below listed regulations aim at harmonizing the legal regimes of the Member States and at ensuring that within the internal market, carriers operate under harmonized and standardized conditions (standardized level of protection).

Table 2

EU regulations on holiday and travel law and on passengers’ rights

No	Subject	Aim (-)/content (•)	Title of legal instrument	Published in OJ (Official Journal of the European Union)
1	2	3	4	5
1	Package travel	<ul style="list-style-type: none"> - to guarantee standards in package travel • legible, comprehensible, accurate and adequate information concerning the facts of the package • liability of the organizer of the package travel for proper performance of all contractual obligations • obligation of the consumer to communicate any failure in the performance to the organizer at the earliest opportunity 	Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours	OJ L 158, 25.6.1990, p. 59
2	Timeshare contracts	<ul style="list-style-type: none"> - to protect against threats arising from the typical complexity, long-term nature and financial relevance of contracts • duty to provide clear, comprehensive, accurate and sufficient pre-contractual information in the language the consumer is familiar with • withdrawal right within a period of reflection • prohibition of advanced payment 	Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis, replaced by: 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	OJ L 280, 29.10.1994, p. 83, replacement: OJ L 33, 3.2.2009, p. 10

Table 2 (continued)

1	2	3	4	5
3	Air carrier liability	<ul style="list-style-type: none"> - to incorporate the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) of 28 May 1999 into EU Law - to avoid situations where victims of accidents are not compensated • civil liability in case of accidents (death, personal injury, loss or damage of luggage) • limitation of liability (maximum sums of compensation) 	Regulation (EC) No 2027/1997 of the European Parliament and of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (as amended)	OJ L 285, 17.10.1997, p. 1 consolidated version: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R2027:20020530:EN:PDF
4	Air passengers' rights	<ul style="list-style-type: none"> - to strengthen the rights of passengers • in the case of denied boarding against the will of the passenger or of cancellation of a flight the passenger receives a) specified compensation and is entitled b) to specified assistance and c) to reimbursement of the ticket price or to continuation or re-routing • in the case of a long delay the passenger receives specified assistance 	Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and repealing Regulation (EEC) No 295/91	OJ L 46, 17.2.2004, p. 1
5	Ban of air carriers and right on information	<ul style="list-style-type: none"> - to protect from safety risks • duty to inform about the identity of the operating air carrier 	Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (as amended)	OJ L 344, 27.12.2005, p. 15 consolidated version: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005R2111:20090807:EN:PDF
6	Rights of disabled air passengers or of air passengers with reduced mobility	<ul style="list-style-type: none"> - to protect disabled passengers or passengers with reduced mobility from discrimination • right to transport • extensive and specified assistance by trained staff without additional charge • obligation to provide sufficient information 	Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air	OJ L 2004, 26.7.2006, p. 1

Table 2 (continued)

1	2	3	4	5
7	Rail passengers' rights	<p>- to strengthen the rights of passengers</p> <ul style="list-style-type: none"> • civil liability in the case of an accident (death, personal injury, loss or damage of luggage) including the limitation of liability (maximum sums) • in the case of a specified delay the passenger is entitled to a) specified compensation, b) assistance and c) reimbursement of the costs of the ticket or continuation or re-routing • protection of disabled passengers or passengers with reduced mobility 	Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations,	OJ L 315, 3.12.2007, p. 14
8	Operation of air services in the EU	<ul style="list-style-type: none"> • rules against discrimination of passengers based on the nationality or the place of residence • strict obligation to communicate the final price of air fares and their components 	Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community	OJ L 293, 1.10.2008, p. 3
9	Liability of carrier of passengers by sea	<p>not yet in force (not later than 31 December 2012)</p> <p>- to incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea of 13 December 1974 as amended by the London Protocol of 1 November 2002 into EU law</p> <ul style="list-style-type: none"> • civil liability in the case of an accident (death, personal injury, loss or damage of luggage) including the limitation of liability (maximum sums) 	Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents	OJ L 131, 28.5.2009, p. 24
10	Sea and inland waterway passengers' rights	<p>not yet in force (18 December 2012)</p> <p>- to strengthen the rights of passengers</p> <ul style="list-style-type: none"> • civil liability in the case of an accident (death, personal injury, loss or damage of luggage) including the limitation of liability (maximum sums) 	Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway, and amending Regulation (EC) No 2006/2004	OJ L 334, 17.12.2010, p. 1

Table 2 (continued)

1	2	3	4	5
		<ul style="list-style-type: none"> • in the case of a specified delay the passenger is entitled to a) specified compensation, b) assistance and c) reimbursement of the costs of the ticket or continuation or re-routing • rules against discrimination of passengers based on the nationality or the place of residence • protection of disabled passengers or passengers with reduced mobility 		
11	Bus and coach passengers' rights (carriage where the scheduled distance is 250 km or more)	<p>not yet in force (1 March 2013)</p> <ul style="list-style-type: none"> - to strengthen the rights of passengers • rules against discrimination of passengers based on the nationality or the place of residence • civil liability in the case of an accident or damage including limitation of compensation • in the case of annulation, overbooking or a specified delay the passenger is entitled to a) assistance and b) reimbursement of the costs of the ticket or continuation or re-routing (excluding compensation) • protection of disabled passengers or passengers with reduced mobility (non-discrimination, right to transport, assistance, information) 	Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, covering long distance services (of more than 250 km) and entering into force on 1 March 2013	OJ L 55, 20.2.2011, p. 1

The brand new legislation regarding consumer protection can be summarized as follows: all carriage of passengers by:

- air,
 - rail,
 - bus and coach,
 - sea and inland waterways,
- may the carriage be effected:

- within a Member State,
 - within the internal market (intra-EU),
 - where the place of departure is located in the territory of a Member State (EU-outbound),
 - where the place of destination is located in the territory of a Member State (EU-inbound), provided that the operating carrier is an EU carrier,
- is subject to a very similar set of rules on:
- enumerated passengers' rights e.g. in the event of cancellation or long delay, including (partial) reimbursement or alternative transportation, compensation (however not always) and assistance (e.g. accommodation for stranded passengers, meals/refreshments, free phone calls),
 - the assistance to meet the particular needs of disabled passengers or passengers with reduced mobility without additional charge and on the protection of these persons and their right to transport; regarding this group of passengers travelling by air, the legislator has set up a specific regulation (Regulation (EC) No 1107/2006) whereas in the younger regulations on passengers' rights the respective provisions are already included (art. 19-25 Regulation (EC) 1371/2007; art. 7-15 Regulation (EU) No 1177/2010 and art. 9-18 Regulation (EU) No 181/2011),
 - a civil liability scheme in the case of an accident (death, personal injury, loss or damage of luggage); it should be stated however, that the legal provisions regularly make the provision that the liability of the carrier is limited; a good example of this is the limitation of the liability for air carriers in case of destruction, loss, damage or delay of baggage according to art. 3(1) Regulation (EC) No 2027/1997: the maximum sum of compensation is 1000 Special Drawing Rights, i.e. approx. 1,100 Euro (IMF 2011); that limitation has been declared valid EU law by the Court of Justice of the European Union (judgment of 6 May 2010, C-63/09 - *Walz*),
 - non-discrimination:
 - a) of disabled passengers or passengers with reduced mobility,
 - b) based on the nationality of the passenger or on his/her place of residence,
 - the obligation to provide appropriate and comprehensive information in due time regarding the passengers' rights, the final price of the fare including VAT and all taxes and fees and regarding other information about the booked journey (Buck, 2011).

5. National consumer protection in the Member States

On the policy of consumer protection the EU enjoys shared legislative competence alongside the Member States (Art. 4(2)(f) Treaty on the Functioning of the European Union). Therefore most Member States have set up national consumer protection provisions.

Conclusions

One of the essentials of the EU's internal market is the freedom of economic action. EU primary law underlines that by recognizing the principles of free movement of goods and free movement of services. In marketing and distribution those two freedoms are tremendously helpful in carrying out transborder business. However, there are imbalances within the market. Concerning B-2-C contracts the economic inferiority of the consumer is presumed. Therefore the legal system should provide countermeasures to protect the weaker party. However, it may be questioned as to whether it should be accepted or not that consumer protection law shows interventionist traits (Kilian, 2010, p. 19) to such a great extent. Should it really be a task of the EU legislator to reduce mobile phone roaming charges? In general consumer law aims at preventing the exploitation of consumers and at abolishing disparities. Business people should be aware of the fact that generally contracting outside of the provisions (derogation by agreement of the contracting parties) is prohibited. One important tool to safeguard the interests of consumers is the right to withdrawal which breaks civil law's general principle *pacta sunt servanda* (agreements must be kept). First (young) consumers accustomed to internet purchases and bookings and skilled with the right to withdraw from a distance selling contract already show an erosion of what our population so far has felt is right.

Due to the fact that EU consumer law is mainly sector-specific law and that the coexistence of EU and national law often is not well coordinated, consumer law can with good reasons be described as an incoherent and too complicated multi-layer law (Schulte-Nölke, 2010, p. 133). Currently consumer law is under review (Review of Consumer Acquis). In 2008 the European Commission adopted the proposal of a (horizontal) Directive on consumer rights merging the Directives 99/44/EC, 93/13/EC, 97/7/EC and 85/577/EC (EC, 2011c), which harmonizes

the different standards, provides consumers with a larger choice and more competitive prices on a real retail internet market and which will strengthen consumer rights (e.g. protection against cost traps on the internet, elimination of surcharges for the use of credit cards). A compromise passed European Parliament in June 2011. It is expected that the Council will formally adopt the directive and that the directive will be published this autumn. The new rules should be transposed into the national laws of the Member States before the end of 2013 (EC, 2011d). Finally, another current extensive project towards a European Contract Law for consumers and businesses should be mentioned (European Parliament, 2011).

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