

Consumer Protection Regulations: The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (“Consumer Regulations”) implements Directive 2011/83/EU and came into force on 13th June 2014 in the United Kingdom, and apply to **traders selling goods, services or digital content to consumers (“Directive”)**. The **Consumer Regulations** apply to contracts entered into on or after 13th June 2014, writes Dr Rosanna Cooper. This article focuses on the contents of the Directive as implemented by the Regulations.

Distance Contract

A **distance contract** covers a contract between a trader and consumer an organised distance sales or service-provision scheme via **distance communication** including, **mail order, Internet, telephone or fax**.

Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

5. Without prejudice to paragraph 4, if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

6. Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at

the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

2.If a distance contract to be concluded by electronic means

places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1).

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order.

(a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and

(b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

A distance contract covers the situation where **the consumer visits the business premises of the trader for the sole purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance.**

The notion of an organised distance sales or service-provision scheme should include those schemes offered by a third party other than the trader but used by the trader, such as an online platform.

A **distance contract does not cover:**

- **A contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication; or**
- A contract **initiated** by distance communication, but **finally concluded at the business premises of the trader;**
- **Reservations made by a consumer through distance communications** to request the provision of a service from a professional e.g. to make an appointment by phone or email
- Websites that **merely offer information on the trader, the trader's goods and/or services and contact details.**

food labelling

internal market for electricity and natural gas

medicinal products for human use

Excluded

medical devices

privacy and electronic communications

patients' rights in cross- border healthcare

What amount to Business Premises?

Business premises include **premises in whatever form** once they serve as permanent or usual place of business for the traders:

- **Shops**
- **Stalls**
- **Lorries**
- **Market stalls** and **fair stands** if they serve as a permanent or usual place of business
- **Retail premises** where the trader carries out activities on a seasonal basis, for instance during the tourist season at a ski or beach resort

Spaces accessible to the public are not business premises: such as streets, shopping malls, beaches, sports facilities and public transport, which the trader uses on an exceptional basis for his business activities as well as **private homes** or **workplaces**.

At A Glance

What you need to know:

- **'ancillary contract'** = a contract by which the **consumer acquires goods or services related to a distance contract or an off-premises contract** and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader.
- **'business premises'** = any **immovable retail premises** where the trader carries out his activity on a permanent basis; or any movable retail premises where the trader carries out his activity on a usual basis.
- **'commercial guarantee'** = **any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity**, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to **conformity** set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract.
- **'consumer'** = any natural person who, in **contracts** covered by the Directive, is acting for purposes which are outside his trade, business, craft or profession.
- **'digital content'** = data which are **produced and supplied in digital form**, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, from a tangible medium or through any other means.

A trader must inform the consumer about the **functionality** and the relevant **interoperability** of the digital content.

Functionality = the ways in which the digital content could be used, the absence or presence of any **technical restrictions** such as protection via **Digital Rights Management** or **region coding**.

Interoperability = a description of the **standard hardware and software** with which the digital content is **compatible**, for instance, the operating system, the necessary version and certain

hardware features.

- **'distance contract'** = any **contract concluded between the trader and the consumer** under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the **exclusive use of one or more means of distance communication** up to and including the time at which the contract is concluded.
 - **'durable medium'** = any instrument which **enables the consumer or the trader to store information addressed personally** to the consumer in a way **accessible for future reference** for a period of time adequate for the purposes of the information and which allows the unchanged **reproduction of the information stored**.
- The consumer should be able to store the information on **durable media** for as long as it is necessary to protect the interests arising from his relationship with the trader including paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.
- **'goods'** = any **tangible movable items**, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as **goods** within the meaning of this Directive where they are put up for sale in a limited volume or a set quantity.
 - **'goods made to the consumer's specifications'** = **non- prefabricated goods** made on the basis of an individual choice of or decision by the consumer.
 - **'off-premises contract'** = any contract between the trader and the consumer (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader for which an offer was made by the consumer in the same circumstances as referred to in point; (b) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or (c) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.
 - **'public auction'** = **a method of sale** where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through **a transparent, competitive bidding procedure run by an auctioneer** and where the successful bidder is bound to purchase the goods or services.
 - **'sales contract'** = any contract under which the trader **transfers or undertakes to transfer the ownership of goods to the consumer** and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services.
 - **'service contract'** = any contract other than a sales contract under which the **trader supplies or undertakes to supply a service to the consumer** and the consumer pays or undertakes to pay the price thereof.
 - **'trader'** = any **natural person or any legal person**, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to the person's trade, business, craft or profession in relation to contracts covered by the Directive.

Off-premises contract

An **off-premises contract** is a contract concluded with the **simultaneous physical presence of the trader and the consumer**, in a place which is **not the business premises of the trader**, for example, at the consumer's home or workplace.

In an off-premises context, the consumer may be under potential psychological pressure or may be confronted with an element of surprise, irrespective of whether or not the consumer has solicited the trader's visit. The definition of an off-premises contract should also include situations where the consumer is personally and individually addressed in an off-premises context but the contract is concluded immediately afterwards on the business premises of the trader or through a means of distance communication.

An example of an off-premises contract is where a **trader visits the consumer's home and the consumer purchases products** promoted and offered for sale **by the trader**.

Formal requirements for off-premises contracts

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.

2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.

4. The information referred to in points (h), (i) and (j) of paragraph 1 may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 if he has supplied these instructions to the consumer, correctly filled in.

3. Where a consumer wants the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), the trader shall require that the consumer makes such an express request on a durable medium.

4. With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed EUR 200:

(a) the trader shall provide the consumer with the information referred to in points (b) and (c) of Article 6(1) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (h) and (k) of Article 6(1), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;

(b) the confirmation of the contract provided in accordance with paragraph 2 of this Article shall contain the information provided for in Article 6(1).

Member States may decide not to apply this paragraph.

5. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in this Directive.

An off-premises contract does not cover the situation where a **trader first visits the consumer's home**

strictly with a view to take measurements or to give an estimate (the consumer does not have to commit); and the contract based on the estimate is then concluded at a later date on the business premises of the trader or via distance communication.

- A public auction implies that traders and consumers attend or are given the possibility to attend the auction in person. The goods or services are offered by the trader to the consumer through a bidding procedure authorised by law in some Member States, to offer goods or services at public sale. The successful bidder is bound to purchase the goods or services. The use of online platforms for auction purposes which are at the disposal of consumers and traders should not be considered as a public auction within the meaning of this Directive.
- Contracts related to district heating should be covered by this Directive, similarly to the contracts for the supply of water, gas or electricity. District heating refers to the supply of heat, inter alia, in the form of steam or hot water, from a central source of production through a transmission and distribution system to multiple buildings, for the purpose of heating.
- Contracts related to the transfer of immovable property or of rights in immovable property or to the creation or acquisition of such immovable property or rights, contracts for the construction of new buildings or the substantial conversion of existing buildings as well as contracts for the rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation. Those contracts include for instance sales of immovable property still to be developed and hire-purchase. The provisions of this Directive are not appropriate to those contracts, which should be therefore excluded from its scope. A substantial conversion is a conversion comparable to the construction of a new building, for example where only the façade of an old building is retained. Service contracts in particular those related to the construction of annexes to buildings (for example a garage or a veranda) and those related to repair and renovation of buildings other than substantial conversion, should be included in the scope of this Directive, as well as contracts related to the services of a real estate agent and those related to the rental of accommodation for non-residential purposes.
- Transport services cover passenger transport and transport of goods. Passenger transport should be excluded from the scope of this Directive as it is already subject to other Union legislation or, in the case of public transport and taxis, to regulation at national level. However, the provisions of this Directive protecting consumers against excessive fees for the use of means of payment or against hidden costs should apply also to passenger transport contracts. In relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by this Directive, with the exception of the right of withdrawal.
- In order to avoid administrative burden being placed on traders, Member States may decide not to apply this Directive where goods or services of a minor value are sold off-premises. The monetary threshold should be established at a sufficiently low level as to exclude only purchases of small significance. Member States should be allowed to define this value in their national legislation provided that it does not exceed EUR 50. Where two or more contracts with related subjects are concluded at the same time by the consumer, the total cost thereof should be taken into account for the purpose of applying this threshold.

Excluded Services

- **Social services** - The provisions of the Directive **are not appropriate** to social services.
- **Healthcare** The provisions of the Directive **are not appropriate** to healthcare.
- **Gambling** - Gambling activities involve wagering at stake with pecuniary value in games of chance, including **lotteries, gambling in casinos and betting transactions**. Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities.
- **Childcare and support of families** and persons permanently or temporarily in need, including long-term care.

Payment of Deposit

The trader **must inform the consumer in advance** of any arrangement resulting in the consumer paying a deposit to the trader, including an arrangement whereby an amount is blocked on the consumer's credit or debit card.

The trader should give the consumer **clear and comprehensible information** before the consumer is bound by a distance or off-premises contract, a contract other than a distance or an off-premises contract, or any corresponding offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their **mental, physical or psychological infirmity, age or credulity** in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.

The information to be provided by the trader to the consumer should be mandatory and should not be altered. Nevertheless, the contracting parties should be able to expressly agree to change the content of the contract subsequently concluded, for instance the arrangements for delivery.

In the case of distance contracts, the **information requirements should be adapted to take into account the technical constraints of certain media**, such as the restrictions on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In such cases the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.

Right of Withdrawal

The consumer must have a right of withdrawal for distance contracts to be able to test and inspect the goods to establish the **nature, characteristics and the functioning of the goods**. With regard to off-premises contracts, the consumer must have the right of withdrawal.

The right of withdrawal expires **14 days from the day of delivery of the goods**.

Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.
2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:
 - (a) in the case of service contracts, the day of the conclusion of the contract;
 - (b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
 - (i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
 - (ii) in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
 - (iii) in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;

It is important to ensure for distance contracts concluded through websites that the consumer is able to fully read and understand the main elements of the contract before placing his order.

On the one hand, the consumer should benefit from his right of withdrawal even in case he has asked for the provision of services before the end of the withdrawal period. On the other hand, if the consumer exercises his right of withdrawal, the trader should be assured to be adequately paid for the service he has provided. The calculation of the proportionate amount should be based on the price agreed in the contract unless the consumer demonstrates that that total price is itself disproportionate, in which case the amount to be paid shall be calculated on the basis of the market value of the service provided. The market value should be defined by comparing the price of an equivalent service performed by other traders at the time of the conclusion of the contract. Therefore the consumer should request the performance of services before the end of the withdrawal period by making this request expressly and, in the case of off-premises contracts, on a durable medium. Similarly, the trader should inform the consumer on a durable medium of any obligation to pay the proportionate costs for the services already provided. For contracts having as their object both goods and services, the rules provided for in this Directive on the return of goods should apply to the goods aspects and the compensation regime for services should apply to the services aspects.

The consumer should be required to **send back the goods not later than 14 days after having informed the trader about the decision to withdraw** from the contract.

Exercise of the right of withdrawal

1. Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract. For this purpose, the consumer may either:
 - (a) use the model withdrawal form as set out in Annex I(B); or
 - (b) make any other unequivocal statement setting out his decision to withdraw from the contract.Member States shall not provide for any formal requirements applicable to the model withdrawal form other than those set out in Annex I(B).
2. The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in Article 9(2) and Article 10 if the communication concerning the exercise of the right of withdrawal is sent by the consumer before that period has expired.

3. The trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit either the model withdrawal form set out in Annex I(B) or any other unequivocal statement on the trader's website. In those cases the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

Exception

Exceptions from the right of withdrawal

Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following:

- (a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;
- (b) the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;...
- (g) the supply of goods made to the consumer's specifications or clearly personalised;
- (h) the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
- (i) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;
- (j) the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;
- (k) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
- (l) contracts concluded at a public auction;
- (m) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;
- (n) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.
- (d) the supply of goods which are liable to deteriorate or expire rapidly;

Reimbursement

All **payments have to be reimbursed**:

1. The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract in accordance with Article 11.

The trader shall carry out the reimbursement referred to in the first subparagraph using the same means of payment as the consumer used for the initial transaction, unless the consumer has

expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

2. Notwithstanding paragraph 1, the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.

3. Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Return of Goods

The consumer **must return the goods within 14 days of notifying the trader of withdrawal:**

Unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader in accordance with Article 11. The deadline shall be met if the consumer sends back the goods before the period of 14 days has expired.

Delivery

Websites that are trading should **indicate clearly and legibly** at the beginning of the ordering process whether any delivery restrictions apply and which means of payment would be accepted.

There are **exceptions to the right of withdrawal** for distance and off-premises contracts:

■ Due to the **nature of particular goods or services**. It's good practice for the trader to inform the consumer:

- ✚ **When delivery** would occur;
- ✚ The **place and modalities** of delivery;
- ✚ Details regarding the **transfer of the ownership** of the goods and the moment at which such transfer would take place;

The **delivery of goods** can take place in various ways, either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible, but in any event not later than 30 days from the day of the conclusion of the contract.

The consumer has a **right to terminate** the contract where the trader has failed to fulfil the obligations to deliver the goods in accordance with the Directive.

The consumer should be **protected during a transport arranged or carried out by the trader**, even where the consumer has chosen a particular delivery method from a range of options offered by the trader, this excludes the option for the consumer to take delivery of the goods or to ask a carrier to take delivery.

Transfer of Risk

Risk is transferred when the consumer acquires the physical possession of the goods when he has received them.

Costs for Return of Goods

The trader must cover the costs for the return of goods.

As to the requirement to inform the consumer of the **cost of returning goods** which by their nature cannot normally be returned by post, it will be considered to have been met, for example, if the trader specifies one carrier (for instance the one he assigned for the delivery of the good) and one price concerning the cost of returning the goods. Where the cost of returning the goods cannot reasonably be calculated in advance by the trader, for example, because the trader does not offer to arrange for the return of the goods, the trader should provide a statement that such a cost will be payable, and that this cost may be high, along with a reasonable estimation of the maximum cost, which could be based on the cost of delivery to the consumer.

Information requirements for contracts other than distance or off-premises contracts

Before the consumer is **bound by a contract** other than a distance or an off-premises contract, or any corresponding offer, **the trader shall provide the consumer with the following information in a clear and comprehensible manner**, if that information is not already apparent from the context:

- the **main characteristics of the goods or services**, to the extent appropriate to the medium and to the goods or services;
- the **identity of the trader**
 - ✚ such as the **trading name**;
 - ✚ **geographical address** at which the trader is established;
 - ✚ **telephone number**;
- **The total price of the goods or services** inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, **the manner in which the price is to be calculated**, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable.
- Where applicable, **the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service**, and the trader's complaint handling policy.
- In addition to a reminder of the existence of a legal guarantee of conformity for goods, the **existence and the conditions of after-sales services** and commercial guarantees, where applicable.
- **The duration of the contract, where applicable**, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract.

- Where applicable, **the functionality**, including applicable technical protection measures, of digital content.
- Where applicable, **any relevant interoperability of digital content** with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.
- Where **a right of withdrawal** exists, the **conditions, time limit and procedures for exercising that right**.
- Where applicable, that the **consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods**.

Fees for the use of means of payment

Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

Communication by telephone

Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.

Additional payments

Before the consumer is bound by the contract or offer, the trader shall 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. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

(a);

Passing of risk

In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

Author is Dr Rosanna Cooper. Contact enquiries@rtcoopers.com.

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