



Section 5.4 of the revised UCPD guidance: Financial services and immovable property

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**Unit E2 - Consumer and Marketing Law
DG Justice and Consumers
European Commission**



Horizontal questions

Exception from full harmonisation (I)

Article 3(9)

"In relation to financial services as defined in Directive 2002/65/EC and immovable property, Member States may impose requirements which are more restrictive or prescriptive than this Directive in the field which it approximates."

Recital 9

"financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect the economic interests of consumers".

Exception from full harmonisation (II)

C-265/12, **Citroën Belux NV** (18 July 2013):

"[Art. 3(9)] does not impose any limit as regards how stringent national rules may be in that regard or lay down any criteria regarding the degree of complexity or risk which those services must involve in order to be covered by more stringent rules. Nor does it follow from the wording of that provision that the more restrictive national rules can cover only combined offers composed of a number of financial services or only combined offers of which the main component is the financial service."

Exception from full harmonisation (III)

***Examples** from the Commission Study on the application of the UCPD in the areas of financial services and immovable property:*

- pre-contractual and contractual **information obligations**: advertisement for money exchange services in Spain
- prohibition of **direct selling/promotional practices**: doorstep selling of monetary credit in the Netherlands
- prohibition of taking advantage of **particular vulnerabilities**: advertising that a loan may be granted without documentary proof of the consumer's financial position in France
- prevention of **conflicts of interest**: prohibition on banks financing their clients' purchase of shares issued by the bank itself in Denmark

Article 5(2)(a) Requirement of professional diligence

- **Article 5(2)(a): particularly relevant** to traders acting vis-à-vis consumers within the fields of immovable property and financial services.
- The purchase of a product such as a house may be among the **biggest investments** a consumer will make in his lifetime and many consumers may be inexperienced in making purchases of this kind.
- Financial service products are often **complex and difficult to fully understand** for consumers and can also involve significant economic risks.
- Hence, the consumer might suffer **significant economic consequences** if the trader does not act with the standard of skill and care which can reasonably be expected from a professional within these fields of commercial activity.



Issues specific to immovable property

Buyer of immovable property as "consumer"?

- **Article 2(a)** : any natural person who is acting for purposes which are outside his trade, business, craft or profession will qualify as a consumer.
- The fact that a natural person buys an immovable property for investment purposes should not affect his status as a consumer, as long as he does this **outside his regular professional activities**. Thus, the provisions of the Directive will apply and protect such a buyer if, for instance, he is misled by a real estate developer in relation to the purchase.
- **For example:** A teacher in Germany decides to buy two flats in a holiday complex in Spain in order to rent them to other people and, at a later point in time, retire in Spain. As long as her usual professional activity is teaching, she will qualify as a consumer under the Directive in relation to the two flats.

Non-professional landlords as "trader"? (I)

- **Article 2(b):** any natural or legal person qualifies as a trader if he is acting for purposes relating to his trade, business, craft or profession.
- The mere fact that a person lets an apartment or a house to somebody else **should not mean that he automatically qualifies as a trader vis-à-vis his tenant**, if this is not his usual professional activity.
- **For example:** A shop keeper owns six apartments, which she rents to consumers. Depending on the concrete situation, national authorities might qualify her as a trader, taking facts into account like e.g. the degree of her professional skills, whether she openly displays that she is acting for business purposes and/or whether she derives significant regular income from renting.

Non-professional landlords as "trader"? (II)

- **But:** UCPD does not fully harmonize commercial practices in the field of immovable property.
- UCPD does not prohibit MS from applying stricter standards by widening the scope of "trader" to include non-professional landlords.
- **For example:** The *UK Consumer protection law guidance for lettings professionals* considers individual landlords as consumers in their relations with selling agents, and as traders in their contacts with their tenants.

Art. 6 and 7: Information requirements (I)

For example:

- Consumers that have bought apartments in certain **property development projects** have experienced that, after the buildings were finished, the apartments were **neither connected to a water supply nor to electricity**. Information that this would be the case would have been likely to qualify as material pre-contractual information in relation to the "main characteristics of the product" under Art. 6(1)(b), 7(4)(a) UCPD. The fact that an additional service would be necessary in order to connect the apartment to these facilities could also be material according to Article 6(1)(e).
- The **surface area of an immovable property** could qualify as material information according to Articles 6(1)(a), 6(1)(b) and 7(4)(a).

Art. 6 and 7: Information requirements (II)

- Where the consumer needs to perform **particular technical checks** or assessments of the immovable property in order **to be aware of specific risks**, this could be material information according to Articles 6(1)(a), 6(1)(b), 6(1)(e) and 7(4)(a).
- The **price** of the property **including VAT and all unavoidable charges**, such as selling agent/broker commission, would be material information according to Articles 7(4)(a) and 7(4)(c).



Issues specific to financial services

Safety net - character

- Financial services defined in Directive 2002/65/EC on distance marketing of consumer financial services as "**any service of a banking, credit, insurance, personal pension, investment or payment nature**".
- Several **sector-specific Directives** are relevant as regards consumer protection in relation to financial services, notably
 - Directive 2004/39/EC on markets in financial instruments,
 - Directive 2007/64/EC on payment services,
 - Directive 2008/48/EC on credit agreements for consumers,
 - Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property,
 - Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

Articles 6 and 7: Information requirements (I)

- **Articles 6(1)(b) and 7(4)(a):** information to consumers should not be false, deceptive, unclear, unintelligible or ambiguous, particularly with regards to the **benefits, expected results and the risks** in relation to a financial product or service.
- Traders should not exaggerate economic benefits, not omit information about financial risks to consumer and **not over-rely on past performance** on the financial product.

Articles 6 and 7: Information requirements (II)

- According to the circumstances, the main characteristics of a financial product according to Articles 6(1)(b) and 7(4)(a) could include information that a financial product will be **calculated in a currency which is not the one in the country** where the contract is concluded (see however Directive 2014/17/EU, which applies to mortgage credit agreements for consumers, on such pre-contractual information)
- According to Article 6(1)(d) and 7(4)(c), the **presentation and calculation of fees and charges** should include all costs incurred by the consumers, for example by including costs of the service related to fees for agents or intermediaries, or in relation to overdraft charges. They should also clearly state that a specific low interest rate and/or charge is only applicable for a limited period of time.

Article 9: Aggressive commercial practices

- **Article 9(d):** "any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader".
- Subject to a case-by-case assessment, obstacles to switching may be considered as an aggressive commercial practice and thus unfair on the basis of Article 9(d).

Application by national authorities

For example:

- **Fine of 1.000.000. €** imposed on 27 March 2009 by the Greek Ministry of Development, Directorate for Consumer Protection on a bank for providing misleading information on the **risks inherent in certain financial products** (bonds).
- When determining whether such practices were misleading, the Greek authorities took into account the fact that the consumers targeted by the bank for the sale of these bonds were **ordinary current account holders rather than professional investors** familiar with these types of financial products.



Thank you!

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