



## Consumers' Protection under Cyprus law

By Dr. Marina Himoni

### Introductory Part

Consumer protection in Cyprus was not greatly developed until the last decade. Its development intensified over the last decade with the implementation of European Directives into the Cypriot Regime. The starting point, or to better state it the trigger point, has been the accession of Cyprus to the European Union which led consumer protection being developed through European initiatives in the area. As a natural repercussion, consumer policy not only constitutes a relatively new area of law within the Cypriot Regime but its development has largely been affected by the European paradigm. Consumer protection at the European level is regulated by numerous specific Directives which Member States have to transpose into their national regimes in order to achieve the desired result.

Cyprus has, since its accession, worked hard in order to transpose all relevant Directives dealing with consumer rights. While this is of course unavoidable, as Member States are under an obligation to transpose Directives correctly and timely, there are of course Member States who do express some degree of disagreement towards European initiatives in the area. A striking example in this regard is the United Kingdom which has a strong tradition in consumer protection and has in numerous occasions been categorical against extensive steps taken at the European level. For Cyprus, on the other hand, the implementation of the various consumer protection Directives has proved to be a straightforward task with no actual problems or concerns emerging. While this may, for the foremost, be attributed to the inexperience of Cypriot legislators in the area as well as their desire, as a new Member State, to achieve the best possible result in their national transposition, there are some wider factors worth of consideration at this point which provide a wider picture of the Cypriot regime and its relationship with European law in more general.



Cyprus constitutes a monist system and monist systems, contrary to dualist systems, are characterised by a unitary perception which views international and national law as being part of the same legal order. International law resources, in the current situation European law, are placed at the same level with or even above their national legislation. Monist systems may even acknowledge international law as being superior to national law. In the case of Cyprus, the Supremacy of EU Law over the Cyprus Law was determined in 2006 with the 5<sup>th</sup> Amendment of the Constitution Law Number 127(I) 2006. In addition, with the adoption of the European Union (ratifying) Law Number 2003, Cyprus is under an obligation to uphold and implement EU Law. Although all Member States have to presumably conform to European legislation, it could be argued that monist systems do exhibit a greater degree of susceptibility towards sources of international law and the fact that EU Law is regarded as supreme influences the field of consumer protection as well. Therefore, it should come as no surprise that Cypriot laws in relation to consumer protection have been guided by a European light.



With the transposition of the various European Directives in the area, there is now a whole bundle of specific Laws under the Cypriot Regime which provide Cypriot consumers with extensive rights in business-to-consumer contracts. As it will be seen below, there is apart from protection from unfair terms in consumer contracts and protection when goods are not in conformity, specific legislation protecting consumers in distance and doorstep contracts as well as legislation protecting consumers from unfair practices and misleading advertises and the list does not end here. Nonetheless, the following part considers perhaps the most important rights brought by some of the major European Directives in the area and their transposition in the Cyprus Law which have eventually given rise to the development of a whole new area.

### **Protection in Distance and Doorstep Contracts**

Despite the prevalence of distance selling and doorstep selling as one of the major types of transaction for consumers, there was, in the case of Cyprus, no specific legislation in place until 2000. This of course does not mean that consumers were not protected at all as the normal contract law principles did apply in those instances. However, the fact that there was no specific legislation in place led to a failure to address the various peculiarities and issues arising with regards to both types of transaction. An evident example emerges from the very fact that in distance selling (which includes purchases made over the Internet, phone, fax, mail etc.) consumers do not have direct contact with the products purchased until the point of delivery. Equally consumers in doorstep selling scenarios (contracts for the purchase of goods at the doorstep of consumer) are caught by surprise by traders who might induce them to enter into a contract which they may later regret. Therefore, it becomes a stressing need to give consumers the ability to withdraw from a contract under those instances. This, amongst other peculiarities, was cured by the transposition of both the Distance and Doorstep Selling Directive in the Cyprus Law in 2000 with the Law for the Conclusion of Consumer Distance Contracts and the Law for Consumer Contracts Concluded Away from Business Premises.

The Consumer Rights Directive which was adopted in 2011 repeals both of the above Directives, although it also applies to consumer contracts other than distance and doorstep contracts. The Consumer Rights Directive was transposed into the national law by the Consumer Rights Law of 2013. The latter has repealed the two previous Laws of 2000 and has brought significant changes to the existing regime. Cypriot consumers now enjoy a range of rights which are enumerated below.

### **Hidden charges & Price Transparency**

The Consumer Rights Directive and subsequently the Consumer Rights Law which has transposed it generally eliminates hidden charges on the Internet and promotes increased price transparency. Traders cannot impose charges to consumers which the latter did not agree to be bound by. This means the trader has to disclose the total cost of a purchase before the consumer is bound by the contract but also traders cannot impose additional charges to consumer without obtaining their express consent. This has the consequence of banning pre-ticked boxes which consumers had to untick in order to avoid additional costs that traders sought to impose on them. More importantly under the Consumer Rights Law, protects consumers from surcharges applied for the use of credit cards but also for the use of telephone hotlines which are strictly banned under the new Law.

### **Right to Withdraw**

The Consumer Rights Law of 2013 more importantly provides for a 14- day withdrawal period in which consumers can withdraw from a sales contract for whatever reason. Under the new Law, there is also extra protection in cases where there is lack of information and the seller does not clearly inform



the consumer about his withdrawal right, the period is now extended to one year. The withdrawal period starts from the moment when the consumer receives the goods rather than at the time the contract is concluded which means that the consumer has more time at this disposal in order to exercise his withdrawal right. In addition, there are generally better refund rights when the consumer exercises his withdrawal right as the trader has to refund any money received back to the consumer within 14 days, as opposed to 30 which was the case before.

### **Provision of Information**

There is a clearer information regime with an extended list of the information that the trader has to provide to the consumer before the conclusion of the contract, including who pays for returning the goods.

### **Protection for Digital Products**

The protection offered by the Consumer Rights Law is more importantly extended to digital products, an area to which the previously regime did not apply by thus providing, a significant number of consumers who purchase digital products nowadays, the available rights mentioned above.

### **Protection from Unfair Contract Terms in Consumer Contracts**

The Unfair Contract Terms Directive was transposed into the domestic legal regime in 1996 and has been the first Directive in the area to be transposed into the Cypriot law. The provisions of it can be found under the Unfair Terms in Consumer Contracts Law of 1996. The purpose of the Law is generally to prevent traders from using unfair terms in contracts with consumers and it particularly seeks to protect consumers from contract terms which they do not have the opportunity to negotiate with the trader. The law introduces a notion of “good faith” in order to prevent imbalances in the rights and obligations of consumers on the one hand and sellers on the other hand. Terms included in consumer contracts need to be written in plain and intelligible language but more importantly, there are, under the particular law, a black list of terms that are always regarded as unfair as well as a grey list which contains terms that might be considered as unfair and which are not binding for consumers.

### **Sale of Consumer Products and Relevant Guarantees**

The Directive on Certain Aspects of the Sale of Consumer Goods and Associated has been transposed in 2000 by the Law on Specific Aspects of Sale of Consumer Goods and Relevant Guarantees and was later amended in 2007. The purpose of the above Law is to provide adequate and effective protection to consumers when purchasing consumer products and to ensure that the goods are in conformity with the contract and thus to what the parties are bound by. There is a presumption that goods delivered to the consumer are in conformity with the contract of sale if they meet the criteria contained in the particular Law. If the goods do not comply with those criteria, the goods are considered not to be in conformity and a set of remedies is in those instances available to the consumer. The consumer has the right of repair, replacement or partial or full refund.

Under the Certain Aspects of the Sale of Consumer Products and Relevant Guarantees Law, the trader is also under an obligation to offer a guarantee to the consumer which must clearly state that the consumer has legal rights under the particular law and which are not affected by that guarantee. It is additionally provided that the guarantee must contain certain specified information and must state in simple and understandable language, the concerns and all substantial elements which are required in



order for the guarantee to be effective. Free guarantees offered to consumers must be legally binding and must be made available to the consumer in writing or any other durable medium.

### **Concluding Remarks**

With the implementation of the various European Directives, consumer protection now comprises a vast area of law within the Cypriot regime which nonetheless mirrors the European Approach. The importance given to European initiatives could additionally be highlighted by the very fact that the Cypriot Government has chosen to transpose the relevant Directives in the form of Laws which is primary legislation. This contradicts the approach followed by Member States such as the United Kingdom which has chosen Regulations for the implementation task in an effort to prevent EU Law from being amalgamated with its national law in the area and thus being blended with old legal traditions of the UK consumer law.

This article has simply focused on only a handful of the Laws dealing with consumer rights but which are perhaps the most valuable for our everyday dealings and which are imperceptibly particular useful. The Law in relation to unfair business-to-consumer- commercial practices seeking to prevent unfair trade practices, the Law on Package Travel, the Law on General Product Safety, the Law on Defective Products, the Law on the Display of the Sale Price simply add to this long list. In a decade, consumer protection has greatly developed as a result of the legislative hyperactivity of European legislations and the adoption of numerous Directives which will undoubtedly continue with the same pace...

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