



**RIGA
GRADUATE
SCHOOL OF
LAW**

BACHELOR THESIS

Consumer Protection in Cases of Unfair Commercial Practices, Misleading Advertisements, and Defective Products

AUTHOR:

Dana Gaikevica
LL.B 2021/2022 year student
student number B019045

SUPERVISOR:

Carlos Llorente, Ph.D.

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

RIGA, 2022

ABSTRACT

Consumer protection has always been an important element in the laws of every country and for good reason, because consumers bring profit, and this improves the economic situation of the country. But the excessive desire to dominate the market led to bad business practices, along with misleading advertisements and defective products. To keep consumers safe and protected, new laws have been formed to protect consumers and their economic well-being. The creation of the directive of uniform legislation for the European Union influenced the fact that national legislation had to be close to uniform requirements, however, weaker consumer protection than in the directive is prohibited. In connection with the information mentioned above, this study is aimed at studying the main issue of the implementation of consumer protection in three areas: unfair commercial practices, misleading advertisements, defective products. The bachelor thesis is based on case law and comparative methods of analysis.

Keywords: Unfair business practice, Consumer's protection, Unfair Commercial Practice Directive, Misleading advertisements, Unsafe products.

TABLE OF CONTENTS

INTRODUCTION	6
Chapter I - Unfair Commercial Practice Prohibition	8
1.1 Consumer protection against unfair commercial practices and law harmonization.....	8
1.2. Unfair Commercial Practice Directive	10
1.3. Interpretation of unfair contract terms in relation to Directive 93/13/EEC and Directive 2005/29/EC	14
Chapter II - Misleading advertisement	17
2.1. Description of misleading advertisement.....	17
2.2. Misleading and Comparative Advertising Directive	19
2.3. Protection in case being deceived by the advertisement	20
Chapter III - Protection in cases of unsafe products	22
3.1. Unsafe products.....	22
3.2. Safety - the main requirement for selling	24
3.3. Consumer protection in cases of defective products.....	26
CONCLUSION	33
BIBLIOGRAPHY	35
PRIMARY SOURCES	35
SECONDARY SOURCES	38

SUMMARY

Consumer protection covers a wide range of practices that can be potentially deceptive to a person and their economic condition, so consumer protection has always been one of the main objectives of the European Union to protect people from unscrupulous sellers. It is important to note that the path of creating laws to regulate unfair business practices was a long one. Even though the European Union was created relatively many years ago, the member countries had different regulations, making it difficult to create uniform conditions. I assume that the influence of factors such as creating a common market and economic progress, not only in each participating country but in general, in the countries of the European Union, influenced the creation of uniform consumer protection laws. This was necessary because with an increase in the number of various services provided, the number of cases when buyers were deceived by sellers also increased. Due to this negative impact, consumer protection laws had to be approved. It should be noted that this bachelor's thesis examines consumer protection laws not only at the national level but also at the European level, in particular the impact of European directives on the national legislation of countries.

In this regard, it is essential to note that consumer protection is necessary to prevent unfair commercial practices, deceptive advertising, and defective products, which negatively affect the financial well-being of individuals and the public because they profit in the form of taxes from businesses.

The consumer protection is the main aim of this Bachelor Thesis in case of receiving an unfair service by consumers, or a person was deceived by advertising and did not receive the expected product. It should also be noted that the work contains requirements for the safety of products, on the basis of which it is possible to evaluate the product and, in case of discrepancy, and ask for compensation. Basically, the thesis is divided into three main parts.

The first paragraph of the first chapter is devoted to unscrupulous commercial practices, particularly the concept of meaning, which the consumer is, and the interpretation of dishonest practices. The second paragraph aims to study the legal aspect of consumer protection, in particular the impact of the directive and its harmonization on the national level of the member states of the European Union. The third paragraph is devoted to unfair terms in contracts, which are sometimes the main precondition that the consumer's rights will be violated. In general, the first chapter of the Bachelor Thesis is devoted to protecting consumers in case of unfair business practices.

The second part focuses on the concept of misleading advertising. In particular, the topics raised relate to the characteristics and signs of deceptive advertising in influencing consumers. This chapter contains an analysis of misleading advertising in practice, how consumer protection is carried out in different cases, and the impact of the harmonization procedure of national legislation under the Directive 2006/114 /EC.

The first paragraph of the third section is aimed at the concept of defective products, as well as the study of liability for unsafe products in different cases. The second paragraph is devoted to the main requirements that the product must meet in the market. The third chapter is related to analyzing cases where consumer rights were infringed due to defective products.

LIST OF ABBREVIATIONS

B2B- Business-to-business

B2C- Business-to-customers

CRPC- Consumer Rights Protection Centre

ECJ- European Court of Justice

EU- European Union

MCAD- Misleading and Comparative Advertising Directive

TFEU- Treaty on the Functioning of the European Union

UCPD- Unfair Commercial Practice Directive

INTRODUCTION

The modern world cannot exist without trade, market relations, and various business types because they generate profits and improve the economic situation in private enterprise and the international trade arena. Since ancient times, connections between merchants and customers, and competitors have played a crucial part in every business. Competition has always been essential since it drives the development of other businesses. The ambition to dominate the market has always plagued vendors, but it was necessary to play by the rules and not cheat. However, it is essential to note that at one point, this motivation changed into fraudulent business activities; the desire to increase profits was replaced by the promotion of low-quality goods, deceptive advertising, and infringement of consumer rights. It is essential to acknowledge that business practices offer a chance to improve the economic situation, but they must be conducted responsibly. Otherwise, there is so much to lose if you do not follow the standards that regulate appropriate behavior in the market.

The rise of numerous unfair business practices inspired the decision to establish consumer protection laws. Consumer protection has always been a critical element of any nation's legislation. People will not repurchase anything if they believe they will be misled, and the government will not punish the sellers if consumers' rights are infringed. These conditions formed the basis for establishing legislation, initially at the level of each state and afterward following the example of the European Union's legislation. Consumer protection covers multiple topics, including protection against unfair practices, deceptive advertising, defective products, and other different areas of business practices. Even though they are distinct fields, they are united since none of them are regarded as good business practices and must be combatted in domestic and international markets.

It is obvious that those illegal business practices have to be controlled by someone, so states have adopted laws that were aimed at consumer protection. If we take the example of legislation in Latvia, the Advertising Law was adopted in the 1999 year, but when Latvia became a part of the European Union then, the amendments from the Directive on Misleading Advertising were transposed to domestic legislation in the 2004 year.¹ It should be highlighted that after Latvian accession to the European Union, all national regulations have to be transposed to the laws provided in EU's Directives.² As a result, the Latvian legislation became more harmonized with other states of the European Union. However, despite the harmonization, this does not prevent governments from introducing more stringent restrictions in specific areas of consumer protection, for example, criminal liability if Member State so decided.

For many years, the European Union has created a unified consumer protection system. Looking back in 1973, when it was adopted "Consumer Protection Charter"³ the origins of consumer protection were spelled out in the main document of the European Union. And therefore, it was essential to harmonize laws that could protect consumers in all areas. In connection with this, the European Union has adopted various Directives, for example, the

¹ Reklāmas likums (Advertising Law) (20 December 1999). Available on: <https://likumi.lv/ta/en/en/id/163>. Accessed on May 10, 2022.

² EUR- Lex. European Union directives. Available on: <https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html>.

³ Ursula Wassermann, "Council of Europe – Consumer Protection", *Journal of World Trade Law*, (1974), p.112, available on: Kluwer Law Online. Accessed on April 25, 2022.

Misleading Comparative and Advertising Directive, but it is worth noting that improvements are still being made, and new notes and conditions are being added.

This bachelor thesis' paper provides an analysis of consumer protection to prevent illegal business practices that have a negative influence on the economy. The primary objective of this project is to examine instances and regulations about deceptive advertising, the directive on unfair competition, and product liability. The main question raised in this paper is: How is consumer protection implemented in Latvia and the European Union?

The question, which aims to study the topic of consumer protection, will mainly be based on different national legislations and the level of European Directives on the prevention of illegal business practices. In addition, a significant role in the study of the issue is played by the analysis of cases from national court practices, as well as topics on consumer protection from the practices of the European Court.

The bachelor thesis consists of three main parts. The first part is divided into an introduction to the general concept of unfair practices and the regulation of consumer protection rights through the Directive 2005/29/EC and consumer protection in cases of a contract that concluded in bad faith. The second part is based on familiarization with the misleading advertisement, Misleading Comparative and Advertising Directive, and a case study analysis of this deceiving practice. The third part consists of examining the concept of product safety on the market and consumer protection laws when the defective products are being purchased. At the end of the work, there are conclusions about the researched issues.

Chapter I - Unfair Commercial Practice Prohibition

1.1 Consumer protection against unfair commercial practices and law harmonization

Without trade, market relations, and business practices, the world cannot exist. The commercial practice existed, is, and will be in the future, and for that are needed many tools. Without business, the country's economic situation will be harmful, and many other problems will appear. Interesting fact that has to be highlighted, in the 2013 year households consumption make around 56 % of the European Union Gross Value Product.⁴ Since GDP countries take a large number from private businesses, the European Union should pay special attention to the protection of consumers since they are an essential link in any commercial practices, whether it is a private business or a public one. Additionally, every state benefits from private business practices and increases the country's welfare. It is essential not to overlook consumer protection, critical for economic stability. However, if the state does not regulate economic activity in the supply of services and commodities, a customer may fall for an unethical seller's trap and lose money. Several governments have attempted to prioritize consumer protection in recent years to avert this dilemma.

Before consumer protection is addressed, we should define who the consumer is. Almost every person will say that consumers are private and legal people. However, it should be mentioned that there are exceptions. Of course, there is protection for a legal person. Still, it depends on each specific case because some laws are aimed only at a private person's protection as a Directive against unfair commercial practices.⁵ Still, the Misleading Comparative and Advertising Directive is mainly aimed at business-to-business relations⁶ or, in other words – legal people. On the contrary, Mateja Durovic has expressed that consumers are only private, and protection is not applied to legal entities because individuals are always less protected than others.⁷

The concept of broad consumer protection has always been critical for countries, but it became much more essential with the founding of the European Union, since it was specifically noted in Articles 12 and 169 of the Treaty on the Functioning of the European Union. However, it is worth mentioning that in order to create a uniform consumer protection system, it was required to consider several other divisions of legislation that may conflict with either the consumer or the producer. For example, commercial practice implies close association with the business-to-customer transactions, contract law, consumer protection, competition law, and other related areas.⁸ Thus, all commercial legal practices must include guarantees for buyer and

⁴European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *On the application of the Unfair Commercial Practices Directive. Achieving a high level of consumer protection Building trust in the Internal Market*, COM (2013) 138 final, p.3, available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0138&from=EN>. Accessed on 4.05.2022.

⁵ 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 with EEA relevance, OJ L 149, 11.6.2005, p. 22–39. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>. Accessed April 10, 2022.

⁶European Commission, Misleading and comparative advertising directive, available on: https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en. Accessed May 5, 2022.

⁷ Mateja Durovic, *European Law on unfair commercial practices and contract law*, Oxford (Portland: Oregon, 2016), p.25.

⁸ *Ibid.*, p.4.

seller.⁹ Mostly they are provided in the written form in the contract in order to be confident that interests of both parties will be protected. However, should be pointed out that sometimes having an agreement between parties does not guarantee the anticipated result of contract performance. Contracts entered into in good faith include consumer protection clauses. Despite the agreement's provisions for consumer protection and penalties for non-performance, there are merchants who engage in unfair business practices and are unaware of the consequences.

Consumer protection policy adoption began many years ago, and several nations enacted specific laws to protect vulnerable parties from business practices. However, it is worth noting that just around 45 years ago, when the European Union's first consumer protection agreement, "Consumer Protection Charter," was enacted, the Member States began paying more attention to that. It has contained regulations for preventing unfair and deceiving business practices, rights of the individuals, and establishing better protection for the people.¹⁰ As a consequence of the chapter's adoption, consumers realize that they will be better protected and have certain additional privileges, one of which is the right to receive trustworthy information about the product.¹¹

Additionally to that, Hans-W. Micklitz has expressed the idea that the main core of customer protection is truthful information that has to be provided by the trader.¹² The same idea was pointed out by Katalina Judit Cserses, saying that the sharing of information is a critical component of the European Commission Consumer Protection.¹³ It should be noted that having sufficient knowledge about all products and services enables consumers to assess the potential benefits of the purchase and the consequences that may result from it.

Considering that each person has freedom of choice, no one should be deprived of that. Business practices are not the exclusion. Unfortunately, in life occurs, situations when a person from the first view cannot understand that the seller infringes his consumer's rights. Sometimes it is challenging to comprehend prerequisites that the person has faced unfair commercial practice or not. Following this, in the 2005 year in the Directive on the unfair commercial practices was created the list of illegal practice that is prohibited in the European Union to inform consumers and help to see the problem from the very beginning.¹⁴

Having legislative frameworks, fines, and other enforcement mechanisms in place to prohibit unfair commercial activities¹⁵ enables the government to provide fair terms for service providers and customers. However, countries had quite diverse regulations in the past, and when cross-border consumer protection was implemented, it created some difficulties. As a result of this issue, the European Union started creating a standardized legal system. It's worth noting that creating universal consumer protection conditions took a long time, as each Member State had its own consumer protection legislation, which needed to be harmonized. The European Union's primary objective in terms of customer protection was to create a specific

⁹ *Ibid.*

¹⁰ Ursula Wassermann, *supra note 3*, p.112.

¹¹ *Ibid.*

¹² Norbert Reich, Hans-W. Micklitz, Peter Rott and Klaus Tonner, *European Consumer Law*, (Cambridge: Intersentia, 2014), p.78.

¹³ Katalin Judit Cserses, *Competition law and Consumer Protection*, (Hague: Kluwer Law International, 2005), p. 210.

¹⁴ Directive 2005/29/EC, *supra note 5*, Annex I.

¹⁵ Section 211 of Krimināllikums (Criminal Law) (17 June 1998). Available on: <https://likumi.lv/ta/id/88966-kriminallikums>. Accessed April 20, 2022.

legal framework for all EU Member States and to do it through a process of harmonization in order to minimize the variations between national laws.¹⁶

Initially, Stephen Weatherill has pointed out that the idea of law harmonization will have a positive effect on consumer protection in cases when the national law is unable to deal with a selected problem, and domestic laws cannot solve the specific issue or have doubts about justice.¹⁷ It should be mentioned that almost in all cases of unfair business practices, consumers are less protected than service providers, so the process of harmonization will establish more safety and guarantees for buyers. However, on the other hand, the full harmonization can diminish consumer's trust in the internal market because national laws will not be considered.¹⁸ Additionally, it can be assumed that the complete harmonization of laws can reduce confidence also in business practices because they will not be protected under national legislation. Nonetheless, their actions will be judged in accordance with uniform, standardized European Union regulations.

However, it should be highlighted that unified rules are an essential element of consumer protection law harmonization. The example of consumer law harmonization is Directive 2005/29/EC.¹⁹ Despite the fact that the purpose of the Directive is to create a unified consumer interest protection system in the Member States²⁰, it does not prevent imposing national law amendments that will have a significant impact on the domestic legislation only in a stricter way, and the rules cannot be less severe than in the Directive.²¹ However, it should be pointed out that the Member States have a right to create more rigorous rules that are aimed at consumer protection mostly in the finance field or real estate field.²² Based on these findings, it can be concluded that national laws have the authority to alter domestic legislation, but only if the amendments are directed at strictly enforcing the prohibition of unfair commercial practices. Additionally, it should be noted that the UPCD does not preclude any modifications to the financial or real estate sectors due to their high vulnerability to possible money laundering. As a result, some individuals are laundering money and, to become legitimate, they are establishing enterprises, distorting competition in the country, and deceiving the public. Money laundering is a significant problem around the whole world. As such, it is critical to establish as stringent a set of laws as possible to manage it from the viewpoint of unfair commercial practice. Although the Directive allows for stricter laws on national legislation, it plays a huge role in overall consumer protection.

1.2. Unfair Commercial Practice Directive

The beginning of the idea that Member States need a harmonized common set of rules as directive started from the Green Paper published by the European Commission in the 2001 year. It was the origin of law that was aimed at consumer protection.²³ After four years, the European Union 2005 year has adopted the "Unfair Commercial Practice Directive" in order to establish

¹⁶ Stephen Weatherill, *EU Consumer Law and Policy*, (Northampton, MA : Edward Elgar Pub., 2013), p.11.

¹⁷ *Ibid.*, p. 12.

¹⁸ Katalin Judit Cseres, *supra note* 13, p.219.

¹⁹ Directive 2005/29/EC, *supra note* 5.

²⁰ *Ibid.*, Article 11.

²¹ Christian Handig, "The Unfair Commercial Practices Directive –A Milestone in the European Unfair Competition Law?", *European Business Law Review* (2005): p.1119, available on: Kluwer Law Online. Accessed on April 15, 2022.

²² Baiba Vītoļiņa, *Patērētāju tiesību aizsardzības pamati*, (Rīga: Zvaigzne ABC, 2015), p.207.

²³ Christian Handig, *supra note* 21, p. 1118.

a common set of rules to protect consumers from aggressive business practices that always lead to negative consequences.²⁴

Now the Unfair Commercial Practice Directive is fully harmonized with Member States' national laws.²⁵ Moreover, additionally, it has to be mentioned that the aims of the European Commission were to create a common market that will function with equal rules for all Member States.²⁶ The most important advantage of the harmonized Directive is that the Member States will have equal rules for trading with each other without any borders because the European Union is considered a single market that helps easier establish goods and services of free movement. It should be pointed out that with free movements of goods, countries are exempted from the taxes, such as for imports or exports giving more favorable conditions to the EU market.²⁷ With the harmonization rules of free movement of goods and services, have been established the common law system for consumer protection that has a big impact on transborder transactions with goods.²⁸ Additionally, unified rules of commercial protection in the European Union make the more effortless harmonization procedure in transborder consumer rights violations. Most laws in the European Union are the same, and the investigation process will be done easier.

As already was mentioned, the main two aims of the Directive of Unfair Commercial Practice are to provide the set of rules that have to be transposed into the EU Member States in national law in the field of consumer rights protection from the economic and market scope.²⁹ According to Article 3(1) of the Unfair Commercial Practice Directive, the scope of application is related to business-to-customer practices and contracts.³⁰ In case of doubt or certainty that the contract was not concluded in good faith and the vendor has deceived the buyer, a harmed person has the right to bring a claim to the court and ask for the ruling. UCPD protects people not only in cases that are listed in the Annex of the Directive but also it investigates other situations in which the customer's economic interests are more infringed than the vendors.³¹

The next aspect, Annex I of the Unfair Commercial Practice Directive provides commercial practices that are considered illegal and prohibited.³² However, there could be exceptions. Of that exception is joined cases C-261/07 “*VTB-VAB NV v. Total Belgium NV*” and C-299/07 “*Galatea BVBA v. Sanoma Magazines Belgium NV*”. Having analyzed them, it can be concluded that not always having an example of an unfair commercial practice that is in the black list of the UCPD, immediately means that the seller is using illegal business practice.³³ For example, under Annex I of the Unfair Commercial Practices combined offers are not prohibited.³⁴ However, after the case examination, the Court has ruled that each case is considered unique and if something looks unfair from the first point of view, from the domestic legislation, does not mean that in the end of the case, it will be considered as an illegal practice as it was mentioned in the national legislation. Moreover, these cases are examples of when the Directive of unfair commercial practice is prevailing over national laws.³⁵ According to the case

²⁴ Directive 2005/29/EC, *supra note 5*.

²⁵ Baiba Vītoļiņa, *supra note 22*, p. 203.

²⁶ *Ibid.*

²⁷ Article 28 of the Treaty on the Functioning of the European Union (Consolidated version 2012), OJ C 326, 26.10.2012. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>. Accessed on May 8, 2022.

²⁸ Baiba Vītoļiņa, *supra note 22*, p. 203.

²⁹ Directive 2005/29/EC, *supra note 5*, Article 1.

³⁰ *Ibid.*, Article 3.

³¹ Mateja Durovic, *supra note 7*, p.11.

³² Directive 2005/29/EC, *supra note 14*.

³³ Judgement of the Court (First Chamber) of 23 April 2009, *VTB-VAB NV v Total Belgium NV*, and *Galatea BVBA v Sanoma Magazines Belgium NV*, *Joined Cases C-261/07 and C-299/07*, ECLI:EU:C:2009:244.

³⁴ Directive 2005/29/EC, *supra note 14*.

³⁵ *Supra note 33*, para. 67.

facts, the plaintiff in case C-261/07 has argued that *VTB* is using unfair commercial practices, offering some free services when the consumer has purchased fuel for a certain amount. The claim to the Antwerp Commercial Court of Belgium was brought on the ground that the combined offers are prohibited under domestic legislation - Article 54 of Belgium Law 1991.³⁶ Pursuant to these facts, Belgium Court has asked ECJ for the preliminary ruling regarding the interpretation of the Directive's articles in the scope of domestic legislation when national law can be forbidden under the Unfair Commercial Practice Directive.³⁷ According to the decision of the court was concluded that having a prohibition on the combined offers in the national law does not mean that the use of UCPD will resolve the case in the same way as national law. These circumstances were considered, and in the final decision of the court was mentioned that the combined offers are not in Annex I of the Unfair Commercial Practice Directive, so the actions of the *VTB* are not violating the principles of fair commercial practices.³⁸

Surprisingly, but Directive 2005/29/EC does not provide the unified system of fines in cases of unfair commercial practices.³⁹ At this point, it should be mentioned that if the court concludes that the business practice is illegal, it will impose a fine pursuant to the national legislation. However, in some cases fines for unfair commercial practices is not the limitation for continuing misleading people. If we are looking at the biggest amount of fine in Latvia, that is 100 000 EUR or not more than 10% of company's profit from the previous year. It can be considered that, in some cases, it will not prevent more illegal practices because the harm can be done for a larger amount of money.⁴⁰ Additionally to that, the Criminal law of Latvia also provides liability for unfair business practices of deceiving advertising that caused harm to the consumer, saying that the manufacturer can have a temporary deprivation of liberty, common works, or fine.⁴¹ The level of punishment will be decided by the court by analyzing all factual circumstances and amounts that their illegal commercial practice has infringed on consumers' rights. All differences in consumer protection laws have led to creation of Directive of unfair commercial practice. Additionally to that, should be pointed out that after the adoption of harmonized Directive against unfair commercial practices, the right of choosing national laws or Directive provisions was limited for 6 years from the 2007 year.⁴² Thus, it means that after that time states have to use harmonized rules of Directive irrespective of fact that their domestic legislation can be more favorable for consumers or opposite was better protection for sellers.

The UCPD divides unscrupulous practices into two types: misleading practices and aggressive practices. Notably, the directive is not restricted to stated criteria of practice when the behavior is already regarded violent or when there are barely perceptible signs of aggression. These criteria can be interpreted as deceptive advertising about the manufacturer, product composition, pricing, and other product-related details.⁴³ Not only that, but according to the directive, any practice including incorrect information is already regarded to be in bad faith. On this basis, it is important to note that the directive does not indicate relief if the producer committed an error with the product. In any case, the manufacturer must be responsible for the product and double-check it, because if the product contains information that influenced the buyer's desire to purchase it, but when the product fails to meet the buyer's expectations, it is no longer important for the manufacturer to provide incorrect information, because the buyer's economic interests have already been compromised.

³⁶ *Ibid.*, paras. 20-21.

³⁷ *Ibid.*, para. 28.

³⁸ *Ibid.*, paras. 57-60.

³⁹ Directive 2005/29/EC, *supra* note 5.

⁴⁰ Article 15²(1) of Negodīgas komercprakses aizlieguma likums (Unfair Commercial Practices Prohibition Law)(22 November 2007). Available on: <https://likumi.lv/ta/id/167759-negodigas-komercprakses-aizlieguma-likums>. Accessed May 1, 2022.

⁴¹ Krimināllikums, *supra* note 15, Section 211.

⁴² Directive 2005/29/EC, *supra* note 5, Article 3(5).

⁴³ *Ibid.*, Article 7.

Although occasionally the indicators of unfair economic competition are not clearly conveyed, and it is not always easy to comprehend that the information presented is false, aggressive activities can be understood immediately. The notable elements of this activity can be noted that the trader insists on buying their product, even threatening with physical force or insulting a person.⁴⁴ Of course, in this instance, the buyer is frightened with these aggressive actions. Still, given the fact that there are occasions when the buyer is on the same page with the seller, it is difficult to decline the purchase since aggressive behavior is characterized by the fact that you don't know what to expect from the seller further because he is already acting aggressively. And so, to avoid large freedom of trade without restrictions, they devised unified consumer protection rules, the side that is initially weaker and can be manipulated. It is occasionally worth understanding that laws do not always help prevent everything. However, preventing commercial misbehavior is effectively matched by rules on penalties in case of unfair play in the market, and it is worth mentioning that sometimes this is a good method to decrease such practices. In accordance with the Directive 1999/44/EC on the sale of items with unfair information, dishonest producers will be forced to pay damages to customers if they get false and misleading information.⁴⁵

A good example in order to illustrate the impact of misleading omissions in the business practices of the UPCD in practice is a case C-611/14 *Canal Digital Danmark A/S*. This case involves the examination of Articles 6 and 7 of Directive 2005/29/EC in the scope of misleading advertisement practice in the TV subscription. A good example in order to illustrate the impact of these two articles in practice is a case C-611/14 *Canal Digital Danmark A/S*. This case involves the examination of Articles 6 and 7 of Directive 2005/29/EC in the scope of misleading advertisement practice in the TV subscription.⁴⁶ The problem why the claim was brought is that *Canal Digital Danmark A/S* had an advertisement on TV regarding the subscription that has deceived people because the price was mentioned as one month. However, in order to get the proposal, the person has to pay for six months. Moreover, additional payment for the card was written in smaller font, and some words were white on the light scene. These visual factors were also considered unfair under Article 3(1) of the Danish law.⁴⁷ Finally, the Court has ruled that under Articles 3 and 7(1) of the Directive 2005/29/EC, the Court has to examine all factual conditions about possible violations. In this case, having misleading information regarding the end price of the proposal on the TV is considered unfair. Secondly, the price that is smaller than the offer but not, in reality, is also considered an illegal business practice because it misleads people. Moreover, if the consumer, due to the offer, pays not only monthly but also for a period of six months, it is recognized as a deceiving commercial practice.⁴⁸

An interesting example of aggressive practice analysis is case from the practice of Consumer Rights Protection Centre Republic of Latvia “E03-PTU-K115-39” in which “*Air Baltic Corporation*” is accused of unfair business practice. CRPC has pointed out that on the website www.airbaltic.lv, the company has offered extra services and offers that violate Article 15(1) of Unfair Commercial Practices Prohibition Law and Article 25(4), parts 6 and 61 of Consumer Rights Protection Law. Following analysis of this case has shown that conditions of a ticket-buying system forced users to take steps in order to decline the airline company's extra services. The Consumer Rights Protection Centre Republic of Latvia determined that this method was an aggressive commercial activity since customers may mistakenly overlook the button to refuse the extra services and thereby acquire undesired services. According to that,

⁴⁴ *Ibid.*, Article 8.

⁴⁵ *Ibid.*, Article 6(1)(g).

⁴⁶ Judgement of the Court (Fifth Chamber) of 26 October 2016, *Canal Digital Danmark A/S*, C-611/14, ECLI:EU:C:2016:800.

⁴⁷ *Ibid.*, para.17.

⁴⁸ *Ibid.*, para. 73.

CRPC decided that by requiring customers to affirmatively deny the airline's automated offer of extra services, the airline coerces consumers into making a choice they may not have taken otherwise.⁴⁹

It is not essential that the activity has a direct impact on the consumer's economic behavior in order to classify the practice as aggressive sometimes, for the understanding that the practice is illegal enough has the potential to impact people's choice.⁵⁰ In any case, when the practice is considered aggressive, it is necessary to study all aspects, including the prerequisites, even if the merchant shows attempt to illegal practice. The consumer in the scope of such a practice has the right to apply to the court for help to be protected. It should be mentioned that the prevention of unfair commercial practices is not only limited to the protection when the unscrupulous seller has already harmed but also, the core of protection can be found in the contract of selling or service provided so that it is vital to prevent consumer in that regard. As a result of the aim to avoid unfair contract terms was adopted, the Directive 93/13/EEC has a close connection with the Directive 2005/29/EC.

1.3. Interpretation of unfair contract terms in relation to Directive 93/13/EEC and Directive 2005/29/EC

The unfair commercial practice directive is aimed at the business-to-consumers relations. It should be mentioned that the UCPD does not cover significantly unfair business-to-business practices because there are relations between legal people that is not the aim of the Directive 2005/29/EC.⁵¹ The most important and basic document for business-to-customers transactions is the contract and not having it, almost in all cases of appeared problems, means that the consumer has no evidence to argue that the seller is acting in a wrongful way. In civil law countries, sellers should behave in good faith while entering into and performing agreements because the idea of good faith is included in the criteria of seller fairness.⁵² According to Article 1 of the Latvian Civil Law, rights and obligations must be performed in good faith. It means that all contracts and practices must be executed in a fair and honest way without misleading practices.⁵³

The Directive 2005/29/EC includes a wide range of rules regarding the conduct of fair business practices. However, for example, the Unfair Commercial Practice Directive does not solve problems that have emerged between individuals or between seller and buyer in respect of the unfair formation terms in the contract.⁵⁴ According to that, in case of controversy of the agreement, there are used different rules for problem-solving, but not the UCPD if there are relations also to the unfair business contract because it does not provide proper protection

⁴⁹Patērētāju tiesību aizsardzības centrs (Consumer Rights Protection Centre) 2012. Gada 23. oktobra spriedums lietā Nr. E03-PTU-K115-39, "Par tiesiskā pienākuma noteikšanu un administratīvā soda uzlikšanu, par negodīgas komercprakses īstenošanu, par kuru paredzēts administratīvais sods Latvijas Administratīvo pārkāpumu kodeksa 166.13 panta trešajā daļā". Available (in Latvian) on: https://registri.ptac.gov.lv/sites/default/files/lieta_air_baltic_keksi_lemums_izraksts_23_10_12_2_.pdf. Accessed on April 20, 2022.

⁵⁰ Pablo Fernández Carballo-Calero, "Aggressive Commercial Practices in the Case Law of EU Member States", *Journal of European Consumer and Market Law*, (2016): p.261, Available on: Kluwer Law Online. Accessed on April 17, 2022.

⁵¹Norbert Reich, Hans-W. Micklitz, Peter Rott and Klaus Tonner, *supra note 12*, p. 79.

⁵² Meryll Dean, "Unfair Contract Terms: The European Approach", *The Modern Law Review*, (June 1993): p.584, available on: <https://www.jstor.org/stable/1096831>. Accessed April 19, 2022.

⁵³ Article 1 of Latvijas Republikas Civillikums (The Civil Law of the Republic of Latvia) (28 January 1937). Available on: <https://likumi.lv/ta/id/225418-civillikums>. Accessed April 3, 2022.

⁵⁴ Directive 2005/29/EC, *supra note 20*.

for the consumers.⁵⁵ If we take into consideration the example of Latvian rules regarding the unfair contracts, they can be founded in Chapter 2 of the Civil Law.⁵⁶ Additionally, the problems of unfair contracts can be resolved by the Latvian Consumer Rights Protection Law. This law is aimed to defend consumers in all fields, for instance, unfair contract terms, consumer's freedom of choice, and other aspects that are related to the consumer protection.⁵⁷ So, if consumer's rights are infringed, the person has a right to ask for the protection in the government bodies, for example, Consumer Rights Protection Centre.

A good example of court practice regarding unfair contract terms and interest on the price in accordance with the Article 3(1) of Directive 93/13/EEC is case C-237/02 "*Freiburger Kommunalbauten GmbH Beugessellschaft & Co. KG v. Ludger and Ulrike Hofstetter*".⁵⁸ According to the case facts, *Ludger and Ulrike Hofstetter* have concluded an agreement with *Freiburger Kommunalbauten GmbH Beugessellschaft & Co. KG* for the purchase of parking place. Article 3 of the Directive provides that the contracts must be made in a good faith, otherwise it will be considered unfair. It follows that all terms in the contract should be fair for both sides, for seller and buyer.⁵⁹ The contract that was signed between parties contained a clause that the price for parking places must be transferred to the contractor. Although the construction may not live up to buyers' expectations. Moreover, according to the concluded agreement, in case of non-payment of the full price, the interest will be added to the total price.⁶⁰ Later, *Ludger and Ulrike Hofstetter* refused to pay because it was violating Article 9 of the German Law of standard business terms. The claimant has argued that the contract containing this clause is not an illegal term with respect to the Directive. In those circumstances, the German court decided to ask ECJ for the solution.⁶¹ The court has ruled that it is for the national court's discretion whether the terms that were mentioned in the agreement are prohibited under Article 3(1) of the Directive 93/13/EEC.⁶² In that respect, it is concluded that in case C-237/02, domestic legislation has more power regarding the interpretation of the unfair contract terms and this case was solved in the favor for *Ludger and Ulrike Hofstetter*.

Another good example of unfair contract terms in the practice, is the case C-435/10 *Jana Pereničová, Vladislav Perenič v. SOS financ spol. s r. o.* was raised the question of whether the existence of unfair terms in the agreement can lead to the termination of the contract.⁶³ Article 6 of the Directive 93/13/EEC states that if unfair terms were found in the agreement, then they do not apply to the consumer. It should be pointed out that it does not mean that the agreement will be invalid.⁶⁴ This article was taken into account by Court for the investigation, and finally, it has concluded that the Directive does not determine the final solution of the problem because it does not imply a complete harmonization with national law. In this case, it is in the interests of domestic legislation to decide whether to treat the contract

⁵⁵ Baiba Vītoļiņa, *supra* note 22, p.206.

⁵⁶ The Civil Law of the Republic of Latvia, *supra* note 53, Chapter 2.

⁵⁷ Patērētāju tiesību aizsardzības likums (Consumer Rights Protection Law) (18 March 1999). Available on: <https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums>. Accessed April 14, 2022.

⁵⁸ Judgment of the Court (Fifth Chamber) of 1 April 2004, *Freiburger Kommunalbauten GmbH Beugessellschaft & Co. KG v. Ludger and Ulrike Hofstetter*, C-237/02, ECLI:EU:C:2004:209.

⁵⁹ Article 3 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29–34. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31993L0013>. Accessed May 1, 2022.

⁶⁰ *Supra* note 58, para.10.

⁶¹ *Ibid.*, para 12-14.

⁶² *Ibid.*, para 25.

⁶³ Judgment of the Court (First Chamber) of 15 March 2012, *Jana Pereničová, Vladislav Perenič v. SOS financ spol. s r. o.*, C-453/10, ECLI:EU:C:2012:144.

⁶⁴ Directive 93/13/EEC, *supra* note 59, Article 6.

as invalid or whether to treat it as valid, removing the unlawful provisions for the consumer. Directive 93/13/EEC does not prohibit accepting extra conditions for national law if it would be better for consumer protection.⁶⁵

The second question that was raised to the Court was whether it is not unfair having an annual percentage rate that is lower than the real rate and is not considered an illegal practice.⁶⁶ The Court has ruled that previously mentioned facts are for the national court to consider whether the contract term in respect of rate is unfair under Article 6(1) of the Unfair Commercial Practice Directive.⁶⁷

⁶⁵ Judgment of the Court (First Chamber) of 15 March 2012, *Jana Pereničová, Vladislav Perenič v. SOS financ spol. s r. o.*, C-453/10, ECLI:EU:C:2012:144., para.32-36.

⁶⁵ Article 6 of the Directive 93/13/EEC

⁶⁶ *Ibid.*, para. 25.

⁶⁷ *Ibid.*, para.45-47.

Chapter II - Misleading advertisement

2.1. Description of misleading advertisement

In our world, advertisement campaigns are an inevitable part of all business practices. Advertisements attract people to get to know more about their new product products or services. In a harsh world of competition, the situation changes, and some practices in order to stay on the market are using all practices; in that regard also, misleading advertisements, such as promising an incredible result, but in fact, it is unrealistic. Advertising helps people learn more about new products on the market and compare and evaluate offers in order to choose the best, but it is worth noting that advertising is not always beneficial. Unfortunately, there are cases when advertising is published to sell a non-qualitative product and deceive buyers.⁶⁸ The problem is that people from the first view cannot realize what they have in front of them. Misleading advertisements have only a negative impact on society, and the difference is only in the seriousness of the problem. Sometimes it can mean that customer has thrown his money away. However, there are cases when it costs one's health. In that regard, misleading advertisements and unfair business practices are closely connected with each other.

To start with, the original purpose of misleading advertising is to deceive a person in order to interest him in buying, appropriating the qualities of products, although they are not, through false information. Moreover, it should be noted that the principle of advertising lies in the fact that there is always a lie in it in order to change the mind of the buyer and assure him that the product will meet all his expectations. Unfortunately, it should be mention that sometimes when you meet an advertisement where that promises colossal results, they will not be such, so you need to be very attentive to every little thing so as not to fall into the trap of a false marketing ploy.⁶⁹ In order not to get into seller's trap, special organizations adopted additional rules for the better consumer protection.

The idea of consumer protection against misleading advertisements was expressed by the Council of Europe in the advice to the member states in the 1972 year saying that the Member States should adopt special rules in order to prevent conceiving advertisements on the market because it misleads consumers and affects their choice.⁷⁰From that can be concluded that illegal promotions were problematic already 45 years ago despite the fact that people had at that time limited sources of technic for having advertisements, such as television and radio; the problem of misleading advertisements now will be only growing not decreasing in the new technology era. Thereby, it should be mentioned that we live in a world of modern technologies; having the internet and websites makes it easier for the traders to promote their products without having a long procedure of posting the advertising in the newspaper. According to that, the chance of posting more advertisements is growing, but it does not always it has a positive impact on society. With a large number of advertisements, it is hard to decide where is a fair and not deceiving announcement.

Additionally to that, the next aspect that should be mentioned as misleading advertising is that it is targeted at one country, but sellers may accidentally or deliberately send it to another country to get people interested in their product's buying, although, in fact, they do not have

⁶⁸ Ross Denton, "The Regulation of Advertising by the EC", *European Business Law Review*, (January 1991): p.3. Available on Kluwer Law Online. Accessed on April 16, 2022.

⁶⁹ Nuseir, M.T., "Impact of misleading/false advertisement to consumer behaviour", *International Journal of Economics and Business Research* 16(4), (2018): p.3, accessed on April 18, 2022, doi:10.1086/599247.

⁷⁰ Ursula Wassermann, *supra note* 3, p. 113.

such an offer in their country. The problem is that in other countries, this practice can be considered misleading advertising, such as when leaflets from Belgium were distributed in Luxembourg in case C-362/88.⁷¹ It follows from this that if the seller disseminates information outside the country, he must be very attentive to the legislation of another country so that his marketing practice is not considered illegal and deceiving.

According to the previous mentioned, it will always be valuable for the buyer to have a manufacturer who will always produce quality products. There are cases when one trader has deceived the buyer, and buyer⁷² will lose confidence in him. In this regard, if a business uses deceptive advertising, including hiding information about a product or quality, then it should be noted that the trader has no goal of having a long-term business in the market because unscrupulous sellers are always identified by the buyer sooner or later.⁷³

A good example of relations between unfair commercial practices and misleading advertisements is case C-435/11 *CHS Tour Services GmbH v. Team4 Travel GmbH*. According to the facts of the case, these both companies are providing travel services with skiing for children in the winter period. They are competitors on the market, in order to be ahead of *CHS Tour Services*, *Team4 Travel* has concluded a contract with the hotel for certain places for accommodation. Moreover, according to the agreement, nobody can book places during specific time period. In the light of all the foregoing considerations, *Team4 Travel* has prepared brochures for the advertising that contains the unique proposal. Later, *Team4 Travel* recognized that *CHC Tour Services* has booked places for the same period. It means that the *Team4 Travel* statement about uniqueness is no longer true and it can be considered as unfair.⁷⁴ Having said that, the *CHC Tour Services* brought a claim against *Team4 Travel* regarding the brochure, that from the view of a competitor, contains misleading information about the dedicated service, because *CHC Tour Services* has also booked in the hotel places and his action will be considered unfair under Unfair Commercial Practice Directive.⁷⁵ European Court of Justice received the question for the investigation whether if under Article 5(4) the action is considered unfair and misleading, should be taken into account also points from the Article 5(2)(a)?⁷⁶ Finally, Court has concluded that if the unfair commercial practice fell within the scope of Article 6(1), there is no need to consider whether it is contrary to another article of that Directive. It should be pointed out that *Team4 Travel*'s actions under Article 6(1) are considered unfair. Moreover, it should be mentioned that *Team4 Travel* was not aware whether the hotel had also provided accommodation services for the *CHC Tour Services*, breaching contract terms with *Team4 Travel* at the time when the brochure was already presented to a group of people.⁷⁷ The previously mentioned example shows that the unfair commercial practice directive has a close connection with the misleading advertisement. However, it provides small rules, and in order to prevent widespread misleading advertisements, the European Union adopted the Misleading and Comparative Advertising Directive at the end of the 2006 year.⁷⁸

⁷¹ Judgment of the Court (Sixth Chamber) of 7 March 1990, *GB-INNO-BM v Confederation du Commerce Luxembourgais*, C-362/88, ECLI:EU:C:1990:102.

⁷² Judgement of the Court (First Chamber) of 19 September 2013, *CHS Tour Services GmbH v. Team4 Travel GmbH*, C-435/11., ECLI:EU:C:2013:574.

⁷³ Nuseir, M.T., *supra note* 69, p. 5.

⁷⁴ *Supra note* 72, paras.12-16.

⁷⁵ *Ibid.*, para.17.

⁷⁶ *Ibid.*, para. 26.

⁷⁷ *Ibid.*, para. 48.

⁷⁸ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising with EEA relevance, OJ L 376, 27.12.2006, p. 21–27. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0114>. Accessed on April 28, 2022.

2.2. Misleading and Comparative Advertising Directive

The directive of misleading advertisement was adopted almost one year later than the unfair commercial practice directive, and it has to be mentioned that it is a good addition in order to tackle illegal business practices. With the adoption of that directive, people are also becoming more protected in cases when their consumer rights are infringed due to deceiving advertisements. An important element that differs from the Directive against unfair commercial practices is that the MCAD primarily focuses on business-to-business relationships. However, this does not interfere with the protection of other consumers in case of being misled by this advertising.⁷⁹

Contrary to the Unfair Commercial Practice Directive 2005/29/EC, the Directive 2006/114/EC against deceiving advertising is less harmonized. That seems to be that countries of the European Union have the right to demonstrate greater protection for competitors than the consumers. However, despite strong protection for the traders, consumers have a significant defense in many cases.⁸⁰ Additionally, the same idea was pointed out by Christian Handig that each country has a different system of protection against misleading advertisements. It is worth noting that although the purpose of the Misleading and Comparative Advertising Directive was to create a unified system of protection, some countries rely on the decision of the state bodies. It follows that this directive is not fully harmonized.⁸¹ It should be noted that Article 5(3) of the Directive 2006/114/EC established more opportunities for national organizations and courts in order to protect consumers if, at the court's discretion producer is acting illegally, they can start legal proceedings and this freedom is not prohibited by the Member States.⁸²

As already was pointed out MCAD does not prevent the EU Member States from establishing harsher rules for the combating the deceiving advertisement in the market because misleading advertisements distort the internal market with unfair practice.⁸³ Moreover, misleading advertisements destroy the process of internal market competition that has a negative impact on the state's economic position.⁸⁴ Additionally, having such marketing actions in the country, the population's mistrust of the government will grow if they cannot control the illegal practices.

Article 3 of the Directive 2006/114/EC establishes criteria for the recognition of whether consumers fell into the trap of misleading advertisements. It should be pointed out that deceiving practice is considered when features of the product are false about the origin, purpose of use, price, or ingredients.⁸⁵ It has to be mentioned that Latvian Law of Advertisements has transposed the unified rules for the domestic legislation. For instance, Article 3 of the Directive⁸⁶ was transferred to the Latvian Law of Advertising to Article 8 that narrates about

⁷⁹Misleading and comparative advertising directive, European Commission, accessed on 5th of May, 2022. Available at: https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en.

⁸⁰ European Parliament, "Addressing unfair commercial practices in business-to-business relations in the internal market", European Parliament, Directorate- General for Internal Policies, Policy Department, Economic and scientific policy A, (2011): p.14. Available on: [https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457364/IPOL-IMCO_NT\(2011\)457364_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457364/IPOL-IMCO_NT(2011)457364_EN.pdf). Accessed in: April 9, 2022.

⁸¹ Christian Handig, *supra note* 21, p. 1131.

⁸² Directive 2006/114/EC, *supra note* 78, Article 5.

⁸³ *Ibid.*, Article 8.

⁸⁴ *Ibid.*, Recital 3.

⁸⁵ *Ibid.*, Article 3.

⁸⁶ *Ibid.*

the criteria when the advertisement is prohibited and considered misleading. According to that, if the person faced deceiving information about the good, he has a right to claim the compensation and bring a claim to the court because the advertisement must contain only truthful characteristics of the product.

2.3. Protection in case being deceived by the advertisement

Consumers are always more protected than traders due to the fact that some sellers mostly intentionally put misleading advertisements in order with awesome qualities of the products, have a significant market position. The problem is that buyers can fall into a trap and buy the product that was not expected. People should recognize that their purchasing decisions may be influenced by deceptive advertising tactics. In that regard, countries are obliged to ensure the protection of the consumers. Additionally, what should be mentioned is misleading health advertising. Unfortunately, no one is immune from this practice, and sometimes it can cost a life, so it is very important to be especially careful in this area.

Now I will refer to the case C – 52/13 *Posteshop SpA – Divisione Franchising Kipoint v Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri* regarding the interpretation and example of the use Misleading and Comparative Advertising Directive. According to the case facts, Italian Court concluded that *Posteshop* had violated the rules of advertising because it had published an advertisement about the franchise. Moreover, the Court has imposed a fine on the *Posteshop* in the amount of Eur 100 000.⁸⁷ An appeal was not taken into account, and the Italian Court asked the ECJ for the rule whether Directive 2006/114/EC has to be regarded as referring to misleading advertising that is also based on unfair comparisons or as referring to two distinct offenses, each of which may be relevant in and of itself, namely misleading advertising and unlawful comparative advertising.⁸⁸

In the light of all the foregoing considerations, the European Court of Justice stated that it has to be pointed out that MCAD has two aims. The first goal is to protect competitors and sellers against deceiving advertisements and secondly, impose criteria when a comparative promotion is allowed.⁸⁹ Moreover, the ECJ said that Member States have to impose practice when competent government organs and courts have a possibilities and rights to cease these illegal practices.⁹⁰ The final interpretation of the Court was that the Directive has to be interpreted separately for two violations and to the result that it is not essential for misleading advertising to be illegal comparison advertising in order to ban and penalize it.⁹¹

Another interesting example of misleading and comparative advertisement in the law practice is case C-44/01 *Pippig Augenoptik GmbH & Co. KG and Hartlauer Handelsgesellschaft mbH, Verlassenschaft nach dem verstorbenen Franz Josef Hartlauer*. According to the case facts, *Pippig* has optical shops in Linz. However, *Hartlauer* has more places for selling glasses in all Austrian cities. The problem is that *Hartlauer*, in his advertising, has compared that his company has a significant advantage over the *Pippig*, having posted prices in the *Pippig* store and *Hartlauer* shop. *Pippig* has brought a claim to the court saying

⁸⁷ Judgement of the Court (Eight Chamber) of 13 March 2014, *Posteshop SpA – Divisione Franchising Kipoint v Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri*, C-52/13, ECLI:EU:C:2014:150, para. 14.

⁸⁸ *Ibid.*, para.18.

⁸⁹ *Ibid.*, para. 22.

⁹⁰ *Ibid.*, para. 24.

⁹¹ *Ibid.*, para. 28.

that *Hartlauer* has to reimburse him money because in their comparative announcement is seen false and misleading information.⁹²

Pursuant to the Court ruling in case C-44/01, can be concluded that Article 7(2) of the Directive 84/450/EEC prohibits harsher domestic legislation in cases of deceiving advertisements.⁹³ Initially, it is an interesting conclusion because in others Directive was mentioned that Member States have right to impose stricter protection in cases of illegal business practices.⁹⁴ Additionally, the court stated that comparative advertising could be considered a legal practice if both goods were not received from the one distributor.⁹⁵

The European Court made a very interesting final answer to the case; judges have pointed out that the Article 3a(1)(e) does not prevent companies from comparing products and prices between opponents on the market and make a publication, however with one exception, name of the company cannot be published, but the logo can be.⁹⁶

⁹² Judgement of the Court of 8 April 2003, *Pippig Augenoptik GmbH & Co. KG and Hartlauer Handelsgesellschaft mbH, Verlassenschaft nach dem verstorbenen Franz Josef Hartlauer*, C-44/02, ECLI:EU:C:2003:205, para.17-19.

⁹³ *Ibid.*, para.56.

⁹⁴ Directive 2006/114/EC, *supra note* 78, Article 8.

⁹⁵ *Supra note* 92, para.65.

⁹⁶ *Ibid.*, para. 84.

Chapter III - Protection in cases of unsafe products

3.1. Unsafe products

Misleading Advertisement and unsafe products, in my opinion, has a close connection. Pursuant to the Article 3 of the Latvian Advertising Law, the advertisement must be lawful, fair and does not include the idea of distorting fair competition in the market.⁹⁷ Sometimes with the help of advertisement, hazardous products are enrolled in the market. The problem is that in these two examples, the outcome is only one, and it is negative. Negative consequences differ from different levels of severity; the lightweight circumstance appears only in waste of money or economics. However, if the unsafe product has an impact on health, it is the most severe outcome.

Should be mentioned, that an item is considered unsafe if it fails to fulfill the amount of protection that a consumer would assume in all conditions. For instance, if the producer built a house and it fails to meet the level of safety that was expected by the consumer, it is considered that a home is an unsafe product and it must be reconstructed in order not to harm somebody.⁹⁸ It is worth noting that the idea of “liability without fault” for arising defect without litigation is fundamentally wrong because sometimes it is difficult to recognize who is to blame for the breakdown or the manufacturer or consumer who misused the product. In this regard, the manufacturer cannot be blamed for defects that were associated with the goods and the idea of responsibility without proof that due to his actions, the product became unsafe. The process of investigation must be precise; otherwise, the innocent person will be sentenced.⁹⁹

Surprisingly, but due to the selling of unsafe products that caused illnesses or death in the United States of America, the budget of the USA government in the 2018 year has decreased by 1 trillion dollars.¹⁰⁰ Katalin Judit Cseres has expressed the idea that if due to unfair promotions, the person’s health was deteriorated, there must be more strict measures against misleading practices.¹⁰¹ The justification for that is seen from the General Safety Regulations. Pursuant to the Article 5 of the General Safety Regulations from year 2005 that states: “*No producer shall place a product on the market unless the product is a safe product*”, it means that the trader has to be well acknowledged regarding his product before selling it to consumers. Otherwise, it might be considered as intentionally selling an unsafe product in order to get a material wealth that, regardless of safety.¹⁰² According to the Statistics of the United States Consumer Product Safety Commission, it can be concluded on the example from the well-developed country – the USA, that the enforcement of legislation that is aimed at the customer protection regarding the safety and against unsafe products is not so effective if in 2009 the number of cases that are related to the causes after use of defective problems is around 29,4

⁹⁷Advertising Law, *supra note* 1, Article 3.

⁹⁸ Stanislaus Meier, Thomas Riehm, “Product Liability in Germany”, *Journal of European Consumer and Market Law*, (2019), pp.162-163, available on: Kluwer Law Online. Accessed April 20, 2022.

⁹⁹ Kenneth B. Wright, “The Defective Product and Strict Liability”, *Law Notes for the General Practitioner*, (April 1969): p.24, available on: <https://www.jstor.org/stable/44029060>. Accessed on April 13, 2022.

¹⁰⁰ UNCTAD, “Unsafe consumer products cost the US economy \$1 trillion each year”, published on 11 July 2018, available on: <https://unctad.org/news/unsafe-consumer-products-cost-us-economy-1-trillion-each-year>. Accessed on April 6, 2022.

¹⁰¹ Katalin Judit Cseres, *supra note* 13, p. 213.

¹⁰²Great Britain, Article 5 of The General Product Safety Regulations 2005(30 June 2005), available on: <https://www.legislation.gov.uk/ukxi/2005/1803/regulation/5/made>. Accessed on 7 April 2022.

million injuries and 21,400 deaths each year.¹⁰³ In the process of the interpretation of results of cases of unsafe products per USA population, the results show a lamentable situation. Taking into account that the population of the USA was in the 2009 year around 306 million¹⁰⁴, The resulting share of injuries due to the use of defective products is 9,67% which shows that almost one in ten people has injuries due to unsafe products. The percentage of death is 0,007%. The difference between these two numbers indicates that there is injury. It does not mean that the person will die. However, if that occurs and after the process of investigation of the case is concluded that the producer has not followed the regulation of safety and consumer protection, he will be convicted for the crime that has infringed people's life and safety. The same point was also expressed by the Barry Cotter, that said that the person is guilty if he supplies products that are not followed by General Safety Regulations.¹⁰⁵ It should be added to this point that if the person supplies to the market defective products and he is aware of that, the liability of harm should pay stricter than in case of not being aware that the product has defects due to different obstacles. Moreover, the service provider can receive a prohibition notice from the State if the goods are not complying with safety regulations.¹⁰⁶ The intervention of state authorities in case of assuming defective products means that the control is happening from the government side in order to minimize the cases of that practices and warn sellers of possible breaches.

If we are taking the example of defective products on European Union's market then European Commission's report in the 2018 year has named areas of goods that are mostly claimed as being unsafe. Pursuant to the report, the most defective goods are considered raw materials, medical products, and goods for transportation.¹⁰⁷ It should be noted that the level of consumers protection with the seriousness of the possible damage will increase because if the person had an injury due to defective pharmaceuticals, the person might have severe problems with the health or die. In that respect, it is imperative to control products in the market and establish more protection for the consumers, specifically in the medicine area.

Additionally, consumer protection is not limited only to the unfair commercial practices, misleading advertising, or defective products; and it is also protected by the Consumer Sales and Guarantees Directive that was adopted in the 1999 year.¹⁰⁸ It should be mentioned that from the 1st January 2022, new provisions should be transposed to the Member States' national legislation because the Directive 2019/771 has amended the older Directive.¹⁰⁹ Following analysis of that Directive shows that this Directive expands opportunities for consumer protection. Unlike other laws, Article 14 provides that in case of receiving non-qualitative goods from the trader, the consumer has a right to ask for the fixing or change the

¹⁰³ Krupp Law Firm. "Dangerous Or Defective Products Liability Lawsuits". Available on: <https://krupplawfirm.com/dangerous-defective-products/>. Accessed on April 7, 2022.

¹⁰⁴ Macrotrends. "U.S. population 1950-2022". Available on: <https://www.macrotrends.net/countries/USA/united-states/population>. Accessed on April 7, 2022.

¹⁰⁵ Barry Cotter, *Defective and Unsafe Products*, (London; Dublin; Edinburgh: Butterworths, 1996), p. 135.

¹⁰⁶ *Ibid.*, p. 173

¹⁰⁷ European Commission. *Report from the commission to the European Parliament, the Council and the European Economic and Social Committee*, 2018. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:246:FIN>. Accessed April 19, 2022.

¹⁰⁸ 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. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01999L0044-20111212>. Accessed on April 25, 2022.

¹⁰⁹ Directive 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods with EEA relevance, OJ L 136, 22.5.2019, p. 28–50. Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.136.01.0028.01.ENG&toc=OJ:L:2019:136:TOC. Accessed on May 2, 2022.

product without any cost.¹¹⁰ Those provisions were taken into analysis of facts in joined cases C-65/09 and C-87/09 *Gebr. Weber GmbH v. Jürgen Wittmer and Ingrid Putz v. Contre Medianess Electronics GmbH*¹¹¹. According to these cases should be mentioned that consumers protection is seen from the scope of Article 3(2) and (3) of Directive 1999/44/EC, in which was stated that if the recipient used the goods for their intended purpose and did not notice the defect at the time of installation, the seller is obliged to replace the goods with a new one, even if he has to pay extra money to remove the defective goods and replace them.¹¹²

3.2. Safety - the main requirement for selling

The domestic market of a country or the European Union always offers a wide range of products and services; however, despite the wide variety, you should be especially careful about the quality of the product so as not to buy a spoiled product that can only cause harm. It should be noted that in the presence of a wide range of products, it is challenging to identify where a product is not safe, and each legally differs between countries; therefore, in order to create a unified system for obtaining secure services and products in the common market, the European Union has adopted the Directive in 2001 with the aim to guarantee that goods introduced to the market are safe.¹¹³ It follows from the foregoing that the EU, specifically the Member States, shall ensure that manufacturers are providing only safe, qualitative, and without defects products.¹¹⁴ It should be pointed out that non-qualitative goods are destroying the internal market in the state, so it is in the government's interest to establish more stringent rules for the protection not only of consumers but also for the better economic situation. It should be mentioned that the Directive is not limited only to consumer protection or producers. It establishes provisions for market regulation by the government. It means that the Member States have to update rules regarding the control of safe products in the market in order to ensure a high level of buyer protection. Additionally to that, countries have to provide opportunities in that deceived consumers can ask for protection and bring a claim to the respective authorities that will grant investigations and compensations in cases of receiving unsafe products.¹¹⁵ The Directive of General Product Safety provides that consumers have the right to receive the information from the manufacturer in order to evaluate all possible risks that can appear in the future time period.¹¹⁶

The product that is on the market shelf must comply with requirements of safety.¹¹⁷ This requirement applies to food and medical products, which are considered the most commonly consumed by people, and cosmetic products and toys, which seem to be safe at first glance. However, it is worth noting that some toys containing small parts may threaten the child, but honest sellers always provide instructions for proper use, which relieves them of responsibility.

¹¹⁰ *Ibid.*, Article 14.

¹¹¹ Judgement of the Court (First Chamber) of 16 June 2011, *Gebr. Weber GmbH v. Jürgen Wittmer and Ingrid Putz v. Contre Medianess Electronics GmbH*, C-65/09 and C-87/09, ECLI:EU:C:2011:396.

¹¹² *Ibid.*, para.79.

¹¹³ Article 1 of the Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety with EEA relevance, OJ L 11, 15.1.2002, p. 4–17. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0095>. Accessed on April 27, 2022.

¹¹⁴ *Ibid.*, Article 3(1).

¹¹⁵ *Ibid.*, Article 9(1) and (2).

¹¹⁶ *Ibid.*, Article 5(1).

¹¹⁷ Jana Valant, “Consumer protection in the EU”, European Parliament, European Parliamentary Research Service, (September 2015):p.8. Available on: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf). Accessed on April 30, 2022.

Another excellent example of consumers right protection is Consumer Protection Cooperation Regulation that was adopted in the European Union. Regulation's aim was to help consumers that were misled by the seller that is located in the different countries of the European Union. This adoption helps rapidly contact another party and ask for the cessation of unfair practice.¹¹⁸ Moreover, it helps to examine all possible violations of consumer rights, and special governmental bodies should take measures to prevent an illegal business practice that harms consumers.

Establishing common set of rules was always the main goal of the European Union and adopting unified rules for safety requirement was no the exclusion. Directive on general product safety and Directive on product liability are closely related to each other. However, they have fundamental distinctions. First, the Product Liability Directive specifically addresses 'defective' items that cause harm or loss and creates a basic concept of compensation that may be enforced by civil law. However, this Directive does not imply more transparent provisions for reimbursement to consumers if they have been deceived. On the contrary, General Product Safety is more based on general consumer protection and laying down rules for manufacturers to reduce the circulation of substandard products on the market and protect consumers in the event of unscrupulous manufacturers.¹¹⁹ However, they both are aimed to the consumer protection.

Consumer protection is always an important element for each state, and Latvia is not the exception. To protect people, Latvia, in the 2000 year, has adopted the rules "On Liability for Defects of Goods and Services." With the accession of Latvia to the European Union, laws on liability were amended with the standards of the Directive 85/374/EEC.¹²⁰ Having analyzed laws should be mentioned that consumers have good protection by the legislation because if the manufacturer has provided unsafe goods that have harmed a person, the producer is liable for all damages, and he must reimburse the money to the victim.¹²¹ From the Latvian legislation, Latvia does not establish separate rules for defective medicine services with more substantial liability for consumer protection for the arisen defects. Interestingly, Germany has legislation regarding product liability, but it does not cover health or medical aspects. It has to be mentioned that they have separate legislation to protect the health-related factors because product liability laws do not provide better and harsher protection for the injured party. It should be added that if a person is suffered from a defective medical product, the service provider, in many cases, will have criminal liability for that because, in that country, substantial attention is aimed at health protection.¹²²

Additionally, Article 3 of the Directive 85/374/EEC states that the manufacturer of the good is liable and responsible for all damages that were caused due to the product's defect for

¹¹⁸ *Ibid.*, p.7.

¹¹⁹ George Argiros, "The EEC Directive on General Product Safety", *Legal Issues of Economic Integration*, (1994): p. 136, available on: Kluwer Law Online. Accessed on April 19, 2022.

¹²⁰ Par atbildību par preces un pakalpojuma trūkumiem (On Liability for Defects of Goods and Services) (20 June 2000). Available on: <https://likumi.lv/ta/id/8683-par-atbildibu-par-preces-un-pakalpojuma-trukumiem>. Accessed on April 17, 2022.

¹²¹ *Ibid.*, Section 5.

¹²² Stanislaus Meier, Thomas Riehm, "Product Liability in Germany", *Journal of European Consumer and Market Law*, (2019), p.162, available on: Kluwer Law Online. Accessed April 20, 2022.

the consumer.¹²³ It should be mentioned that this Directive does not explain liability for the person who is providing services with the defective product. In that respect was the case C-495/10 *Centre hospitalier universitaire de Besançon v Thomas Dutruieux and Caisse primaire d'assurance maladie du Jura*¹²⁴, when the person was injured when the bed in the medical service was burning, the Court has ruled that the liable for the damages was the company who had produced the equipment for the hospital. In any case, the Directive does not prohibit the Member States of the European Union from establishing liability rules for service providers with defective goods additionally, although in case C-495/10 was concluded that hospital services are innocent of the occurred damage.¹²⁵

3.3. Consumer protection in cases of defective products

The consumer is the main object for protection in cases of unfair commercial practices, unsafe products and misleading advertisements. However, should be highlighted, that not all people are considered as consumers. By the view of Mateja Durovic, the consumers are those who are not providing any business or manufactory services. It means that the consumer can't be considered a legal person and consumer protection is applied to the natural people.¹²⁶ Individuals were always less protected than legal people, so it was essential to ensure requirements for consumer protection in cases of defective products.

Each European Union's Member State has legislation regarding consumer protection in cases of unsafe and defective products. With the adoption of Directive 85/374/EEC, they have to transpose amendments to the domestic law. Advantages of having a unified system of consumer protection for the products' liability because defective products can spoil the quality of the EU market. The defense for consumers has to be equal for all countries in order not to have differences in legislation that will create more problems and it was the aim for many years.¹²⁷

The history of consumer protection and product liability has a long history in which many laws were changed. Some of them were replaced by stricter rules, and some became not as severe as they were before. For example, if we are looking at French laws adopted at the beginning of the 19th century, then we should point out that France had a strict liability for damaged goods at that time. The presumption of innocence in that country for sellers was not taken into account by the legislative powers such as courts because, in their view, if the defect appeared, then the trader was acting not in good faith and wanted to sell a non-qualitative product. Moreover, it should be highlighted that consumer protection was in the first place in all cases than the protection of sellers.¹²⁸ Under this French law, manufacturers had to evaluate all the risks associated with the possibility of defects before selling to others, so consumer protection was more critical than sellers. Also, it should be noted that the imposition of strict

¹²³ Article 3 of the 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, OJ L 210, 7.8.1985, p. 29–33. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31985L0374>. Accessed on April 10, 2022.

¹²⁴ Judgement of the Court (Grand Chamber) of 21 December 2011, *Centre hospitalier universitaire de Besançon v Thomas Dutruieux and Caisse primaire d'assurance maladie du Jura*, C-495/10, ECLI:EU:C:2011:869.

¹²⁵ *Ibid.*, para.41.

¹²⁶ Mateja Durovic, *supra note 7*.

¹²⁷ Directive 85/374/EEC, *supra note 123*, Recital 1.

¹²⁸ Jon R. Maddox, "Products Liability in Europe: Towards a Regime of Strict Liability", *Journal of World Trade*, (1985): p. 510, available on: Kluwer Law Online. Accessed on April 21, 2022.

rules for sellers could stop the circulation of low-quality products that would spoil the domestic market.

Before introducing uniform rules by the directives of the European Union, the countries had completely different laws. While Germany and France blamed the manufacturers for all defects and provided a more comprehensive range of rights for consumers, Italy, in its civil law, indicated that the seller was responsible for the fault, which he knew about before the sale and concealed it. Unlike Germany, unscrupulous manufacturers in Italy are limited only to a fine. However, they are not prosecuted for defects, but it should be noted that in the case of the production of non-safe medical goods and food products, liability for this will be stricter than in other aspects.¹²⁹

The idea that there have to be stricter liability for the serious damages in cases of health is supported by Hans. W. Miclitz and he believes that the idea of strict liability in case of defective products was appeared from the legislation that earlier was based on the idea that each person who has produced the unsafe product is liable for the damages from the perspective of theory of strict liability. Additionally to that, should be mentioned that consumer protection will be always in dominating position, because causes may have a significant effect on the human health. In that respect, protection of consumers will be always important in order to minimize to serious injuries.¹³⁰

In that respect, Latvian law does not establish criminal liability or tort law, but the compensation for the damages has to be accounted for according to Latvian Civil Law.¹³¹ The victim has a right to bring a claim for the reimbursement in three years period after the defect has appeared.¹³² Additionally, the person cannot ask for compensation if the product has been on the market for more than ten years, even though it can cause the defect after time termination.¹³³

Barend Van Leeuwen & Paul Verbruggen believe that the cases C-503/13 and C-504/13 are significant for the Member States' legislation for the establishing better procedure of protection in cases of product liability.¹³⁴ According to the case facts, the problem is that the defibrillators that the German company produced had defects, and ECJ has to interpret the liability for the unsafe goods.¹³⁵ It has to be pointed out that Germany is one of the countries that have an strong liability for the defective medicine services.¹³⁶ Those facts were taken into account by the Court and stated that under Article 6(1) of the Directive concerning liability for defective products, it could be concluded that whole goods that were manufactured at the same time without investigation will also be considered inferior. The following vital point that was explained from the scope of Article 1 and Article 9(1)(a) about the liability in case of producing unsafe products for the human health and in the cases C-503/13 and C-504/13 was indicated

¹²⁹ *Ibid.*, pp.514-515.

¹³⁰ Hans.W. Miclitz, *supra note* 12, p.242.

¹³¹ On Liability for Defects of Goods and Services, *supra note* 120, Section 10.

¹³² *Ibid.*, Section 14(1).

¹³³ *Ibid.*, Section 14(2).

¹³⁴ Barend Van Leeuwen, Paul Verbruggen, "Resuscitating EU Product Liability Law? Contemplating the Effects of *Boston Scientific Medizintechnik GmbH v. AOK Sachsen-Anhalt and Betriebskrankenkasse RWE* (Joined Cases C-503/13 and C-504/13)", *European Review of Private Law*, (2015): p.901, available on: <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/erpl0023&div=61&id=&page=>. Accessed on April 21, 2022.

¹³⁵ Judgement of the Court (Fourth Chamber) of 5 March 2015, *Boston Scientific Medizintechnik GmbH v. AOK Sachsen-Anhalt — Die Gesundheitskasse, Betriebskrankenkasse*, C-503/13 and C-504/13, ECLI:EU:C:2015:148.

¹³⁶ Stanislaus Meier, Thomas Riehm, "Product Liability in Germany", *Journal of European Consumer and Market Law*, (2019), p.162, available on: Kluwer Law Online. Accessed on April 20, 2022.

that defective products would be considered as criminal liability for the manufacturer.¹³⁷ Having analyzed the case should be highlighted that the liability for producing the defective product in medical services is more severe than in other areas.

The good example of unsafe services related to the medicine is case C-183/00 between plaintiff *Maria Victoria González Sanchez* against defendant *Medicina Asturiana SA* regarding the reimbursement of money after the medicine service when Hepatitis C virus with the blood was transposed to the plaintiff's body. The question raised to the European Court of Justice was regarding Article 13 of the Directive 85/374/EEC, which can be interpreted as preventing the restriction of consumers' rights granted by the National law after they were transposed to the Directive. The Spanish Government has solved the problem that the Directive and National regulation of Spain has a different level of liabilities regarding the damages that were caused due to unsafe products. It should be pointed out that national legislation has more fair compensation for the plaintiff than Directive 83/374/EEC. The Court rejected the idea that the plaintiff expressed that federal law is more beneficial than a Directive. Accordingly, the Court has condemned Article 13 with the notion of approximation of national rules to the Directive. In that case, it means that there are limitations of law interpretation when it is transposing to the Directive. This ruling shows that adopting the Directive does not mean that the outcome will be more favorable than national law because case C-183/00 indicates that the consumer protection is less in the Directive than domestic legislation.

However, even though consumers are a less protected party compared to sellers, their rights are also limited in some areas. The exclusion is that consumers have a right to ask for a price reduction or breach of the contract only when the producer cannot repair the goods.¹³⁸ Despite consumers' will to terminate the contract, it should be pointed out that this idea establishes limitations for the consumers' free will and actions to breach the contract. For example, the agreement between seller and buyer cannot be terminated under Article 13(5) if there is no serious reason for breaching it. The seller should investigate the level of seriousness of the defect.¹³⁹

The system of consumer protection was changing over the years due to many events in the international arena. Having analyzed legislation should be mentioned that before the accession of Latvia to the EU and the harmonization of laws, consumer protection was mainly controlled by the state. In that respect, in order to productively launch a product on the market, it was necessary to obtain special licenses and pass security controls in which the state was convinced of the safety of the product. However, after 2004, when Latvia joined the European laws, consumer protection changed; namely, now the manufacturer, and not the state, was responsible for the safety of the product. It should be noted that the state has not lost its powers of control, but now in the case of a product with a defect, more responsibility lies with the manufacturer, and the state carries out mainly verification and management in case of unfair practices in order to protect consumers.¹⁴⁰

¹³⁷ *Supra* note 135, para.56.

¹³⁸ Joasia Aleksandra Luzak, "Who should bear the risk of the removal of the non-conforming goods?", *Zeitschrift für Europäisches Unternehmens- und Verbraucherrecht* 1(1) (2012): p.35. Accessed May 2, 2022, DOI:10.1007/s13590-011-0003-5.

¹³⁹ Directive 2019/771, *supra* note 109, Article 13(5).

¹⁴⁰ Baiba Vītoļiņa, *supra* note 22, p.283.

Article 17 of Latvian Law on the Safety of Goods and Services provides that when the products are not applied to safety requirements, the producer will be entitled to the administrative offense. In that respect, the minimal amount paid to the producer if he is a natural person who has offered unsafe products on the market is 700 EUR. However, if the manufacturer is a legal person, he is obliged to pay 275 EUR to 14 000 EUR.¹⁴¹ Additionally, Latvian Criminal Law establishes liability for non-conforming safety provisions as imprisonment for two years or temporary imprisonment.¹⁴² The way of detention is at the court's discretion, but it should be pointed out that Latvia did not have this practice. Also, Latvia provides a minimal amount of compensation, and Latvia does not have a limit until which the manufacturer has to pay if the product is unsafe and if the goods do not fulfill the obligations of safety.¹⁴³ However, the Directive 85/371/EC provides that if the producer has injured someone with the defective product and had a serious impact on the health or death, the limit should not be less than 70 million EUR.¹⁴⁴

Each country should be able to check for unfair commercial practices and substandard goods and provide assistance to aggrieved buyers. Suppose we are looking at the example of Latvia. In that case, we have “Patērētāju Tiesību Aizsardzības Centrs” (Consumer Rights Protection Centre) that ensure the control of the market and protect consumers' rights. Specifically, CRPC checks the compliance of goods and services with safety requirements, investigates documentation from manufacturers, and also provides support to people whom unscrupulous practices have deceived.¹⁴⁵

Next aspect of consumer protection is Article 114 of Treaty on the Functioning of the European Union. However, there are assumptions that the Article 114 TFEU is not significantly aimed to the consumer protection, but it mostly provides the harmonization process of insurance premium payment between Member States in cases of transborder conflicts with consumers when the seller has operated in a bad faith. Additionally, to that, the process of reimbursement of money in case of small defect between non- Member States can be difficult due to different legislation. However, the Article 114 TFEU is aimed for the creation of uniform conditions for the compensation in case of occurred defect. However, should be pointed out that the manufacturer is not liable for damage if the consumer has not rightly used the good.¹⁴⁶

The definition of safe product can be found in the Article 2 of the General Safety Directive. Under that, it should be mentioned that the good is considered safe if there are all instructions and requirements for the proper use of the product. Additionally, the producer has to provide information regarding the possible negative consequences if the product will not be used according to the purpose. If we take an antibiotic as an example, then alcohol is strongly prohibited while using them. It should be noted that if a person has not read the instructions for proper use, then the manufacturer of medical products does not have a responsibility in case of health problems. This example shows some exclusions when the producer is not liable for the product if the consumer has not used it correctly.¹⁴⁷

¹⁴¹ Article 17 of Preču un pakalpojumu drošuma likums (Law on the Safety of Goods and Services) (7 April 2004). Available on: <https://likumi.lv/ta/id/87664-precu-un-pakalpojumu-drosuma-likums>. Accessed May 3, 2022.

¹⁴² Kriminallikums, *supra note* 15, Section 203.

¹⁴³ Baiba Vītoļiņa, *supra note* 22, p. 328.

¹⁴⁴ Directive 85/374/EEC, *supra note* 123, Article 16.

¹⁴⁵ Consumer Rights Protection Centre. Consumer protection, available on: <https://registri.ptac.gov.lv/en/content/consumer-protection-0>. Accessed April 18, 2022.

¹⁴⁶ Stephen Weatherill, *supra note* 16, p. 187.

¹⁴⁷ *Ibid.*, p. 263.

European commission believes that in order to minimize defective product on the market, sellers have to ensure that the information of their product is available freely and for all people. It means that the information of the content of product or requirements for proper use has to be available publicly. Should be highlighted that the requirements of providing the full information to the customers will be important in dealing with unscrupulous traders because government bodies can faster recognize whether unsafe product is on the market and prevent situations until moments when the consumers will be already harmed.¹⁴⁸

Should be highlighted that Article 12 of the TFEU says that the consumer protection is one of the most important points for the consideration in cases of adopting additional legislation. It is very interesting that consumer protection comes first and should not be in conflict with other regulations that are related to the business practices.¹⁴⁹ One of the reasons why this, may be due to the rapid process of industrialization and despite the fact that business opportunities are expanding, buyers may find themselves in such a situation that their rights will be violated. The European Commission creates many new recommendations regarding doing business, marketplaces and other restrictions, however, it should be understood that under new laws, the interests of consumers must be protected in any case.

Additionally, to the Article 12 of the Treaty of the Functioning of the European Union, the ideas of protection consumer rights are found in the Article 169 of TFEU with purpose of health and safety protection. The health and safety for each person is an evitable element for everyone's life. According to that, these fields have to be specifically controlled by the domestic legislation. Additionally, if the Member State decided to implement harsher rules for cases of caused damage than in the European Directive, for cases, such as, defective products, then European Commission cannot influence this decision if it is not weaken the consumer protection because less protection than in Directive in the EU Member States is prohibited.

The European Commission has made a significant contribution to the development of the policy of consumers and the protection of their rights. It is worth noting that it is difficult to create a single version for all participating countries, however, they aim to ensure that all information that is supplied to the buyer before the purchase is complete and fair, so that all risks that could be associated with a specific product can be assessed. This is a good practice for consumers because they are also protected from an economic point of view, so as not to waste money on a product that will not meet expectations, because the interests of each person are different, so providing information about the product is important, not only for safety, but and the economic interest of consumers.¹⁵⁰

Consumer protection has also limitations, for example, if the person is harmed by the unfair producer, it cannot for their will decide whether to bring a claim against unscrupulous seller. It means that in any case the claimant firstly is obliged to ask the domestic court for the ruling and only if the domestic court cannot solve the case, national court will raise the question to the ECJ.¹⁵¹ As a result of which, the ruling will be based on the Directive legislation. Should be pointed out, that not in all cases, consumers are better and favorable protected by the Directive as it was in case C-183/00 *Maria Victoria González Sanchez v. Medicina Asturiana AS*.

¹⁴⁸*Ibid.*, p. 276.

¹⁴⁹ *Supra note 27*, Article 12.

¹⁵⁰ Jana Valant, *supra note 117*, p.3.

¹⁵¹ *Ibid.*, p.5.

It can cause doubts among people about whether unified rules can fairly resolve the dispute because each state also has different legal rules that can be taken into account. Case C-183/00 *Maria Victoria González Sanchez v. Medicina Asturiana AS* is an example of the negative side of the harmonization process because national legislation had favorable criteria for consumer protection than Directive 85/374/EEC. As a result of domestic legislation transposition to the Directive, the plaintiff did not receive the expected protection and remuneration from the UCPD that he could get from the national law if it was not amended.¹⁵²

Another excellent example of consumers right protection is Consumer Protection Cooperation Regulation that was adopted in the European Union. Regulation's aim was to help consumers that were misled by the seller that is located in the different countries of the European Union. This adoption helps rapidly contact another party and ask for the cessation of unfair practice. Moreover, it helps to examine all possible violations of consumer rights, and special governmental bodies should take measures to prevent an illegal business practice that harms consumers.¹⁵³

Each country in the European Union has to ensure that there are unique bodies that will ensure the safety of consumers.¹⁵⁴ Consumer Protection Centers play a huge role in improving consumer protection. They collect complaints about unscrupulous consumers to prevent possible illegal actions of sellers and provide assistance to people who find themselves in an unpleasant situation. One example was in Latvia when *SIA "VP"* has selling toys that did not provide all the necessary information that meets the requirement of safety. As a result of which of receiving no answer from the VP, the PTAC decided to prevent this business because it does not provide all the necessary safety information to avoid problems with consumers that the unscrupulous trader might harm.

Member States are obliged to transpose the Directive of general safety requirements till 15 January 2004 to the national legislation.¹⁵⁵ If states do not adopt it, they may have to pay fine as it was in the Case C-310/05 *Commission v. Luxembourg* when Luxembourg did not at time have transposed the Directive 2001/95/EC. Additionally to that, they have to establish special bodies that will be responsible for controlling the market.

As already was stated that consumer protection is applicable only for natural persons¹⁵⁶, however, it is important to mention that there are exclusions. One of them is seen from the case C-285/08. Based on the first article of the Directive 85/374/EC, the bottom line is that if the final user receives a product with defects, both the supplier and the manufacturer are liable. However, it should be noted that there are exceptions to the practice. An excellent example of this is the case C-285/08. For example, let's take into account the facts of this situation. Consumers received a product with a defect when the lamp caught fire, and based on this, the consumer requested compensation from the service company, which paid the injured party. However, it is worth noting that the servicing company is not a manufacturer all the same. Based on this, the service company requested compensation from the manufacturer, but that party sent a claim to the court. The court examined all the facts of consumer protection and ruled that if the consumer uses the product for professional purposes, then the manufacturer is

¹⁵²Judgement of the Court (Fifth Chamber) of 25 April 2002, *Maria Victoria González Sanchez v. Medicina Asturiana AS*, C-183/00, ECLI:EU:C:2002:255.

¹⁵³ Jana Valant, *supra* note 150, p. 7.

¹⁵⁴ *Supra* note 113, Article 6(2).

¹⁵⁵ *Ibid.*, Article 21(1).

¹⁵⁶ Mateja Durovic, *supra* note 7.

not liable.¹⁵⁷ This interpretation by the court casts doubt on consumer protection as such because if the consumer is a legal entity and not an individual, then based on this practice, the manufacturer is not liable, but only if the other party does not prove involvement and the connection between the defect and the defect.¹⁵⁸ Based on this, it should be noted that a legal entity can receive compensation, but the procedure is many times complicated.

Another interesting example of the possibility of defective products from the perspective of the consumer protection is case C-621/15.¹⁵⁹ Despite the notion that, in most circumstances, when a European court rules, national law is disregarded, this case demonstrates the reverse. The problem of defects occurs in the scope of medical goods. As stated, some countries have strict liability for unsafe products if they do not conform to the safety requirements. According to the case facts, it was supposed that the Sanofi production vaccine had defects because the person had problems with health after doses, and then he died. However, it should be mentioned that the person did the vaccine in 1999 year, but he died in 2011, the period between these two dates is long.¹⁶⁰ The death of the person raised doubts regarding the safety of *Sanofi* vaccines. Additionally, a family of the dead person brings a claim to the French court saying that Sanofi has provided defective medical products and the company has to pay compensation for the injuries.¹⁶¹ It is worth mentioning that the European Court of Justice said in its ruling that French national law must be considered, particularly with respect to establishing a causal link between a product flaw and its effects. As a result, the consumer is always entitled to compensation for loss, but only if he can establish a causal connection, in this example, the link between a hazardous vaccination and death for many years later.

¹⁵⁷ Judgement of the Court (First Chamber) of 4 June 2009, *Moteurs Leroy Somer v Dalkia France and Ace Europe*, C-285/08, ECLI:EU:C:2009:351, para. 17.

¹⁵⁸ *Ibid.*, para.32.

¹⁵⁹ Judgement of the Court (Second Chamber) of 21 June 2017, *N. W, L. W, C. W v. Sanofi Pasteur MSD SNC, Caisse primaire d'assurance maladie des Hauts-de-Seine, Carpimko*. C-621/15, ECLI:EU:C:2017:484.

¹⁶⁰ *Ibid.*, para. 9-10.

¹⁶¹ *Ibid.*, para. 11.

CONCLUSION

The brief conclusion for research is that the national consumer protection laws in the participating countries are, in most cases, harmonized and generally do not differ from directives. The difference is that the directive prohibits the introduction of a stricter degree of consumer protection in some areas, and the difference usually relates simply to the level of severity in the case of bad business practices or defective products.

The following conclusions were made based on the question. The first and most important conclusion is that if a country is a member of the European Union, then the legislation to protect consumers through directive harmonization is basically the same as in other countries of the European Union. It is worth noting that in the case of incidents where consumer rights are violated, having the same laws between countries greatly facilitates the investigation procedure in case of violation. The creation of common consumer protection frameworks for countries has been the main task of the European Union since the time when the first main document of the European Union was created, the "Treaty on the Functioning of the European Union." In which Articles 12 and 169 expressed the idea of law harmonization, but it was a very long process of adoption.

First, it is essential to note that consumer protection can occur at two levels: national and European. In the case of protecting the consumer's interests at the domestic level, a person has the right to write a complaint to the Consumer Rights Protection Centre, and raise his problem, which concerns any area of protection of his interests. For example, unfair contracts, illegal business practices, deceptive advertising, and unsafe products. Each country should have an organization that implements consumer protection, investigates the problem, and punishes unscrupulous sellers. However, it is worth noting that despite harmonizing national legislation under the directive, the directive does not imply a single law regarding the penalty if consumers act in bad faith. This issue is left to the state's discretion, having assessed all the damages caused.¹⁶²

Secondly, the next conclusion is that in the case when the injured party is not satisfied with the decision of the national court, it has the right to file a claim with the Court of Justice of the European Union. However, it is worth emphasizing the fact that the European Court decides on the basis of a directive, and this may not be particularly favorable for the injured party, who was hoping for a better outcome.

It is important to note that some illegal business practices may start with bad terms in a contract. In this regard, the European Union adopted Directive 93/13/EC, which aims to protect consumers. Still, if there are unfair terms in the contract, the contract does not meet the requirements when it must be executed in good faith. Still, it is also worth mentioning in the case *C-237/02*, the European Court decided that if, at the level of national legislation, terms in the contract are considered unfair, then, in this case, the advantage will be to federal legislation, and not to the European directive.

The following findings relate to misleading advertising. It's important to note that it's not always easy to tell misleading advertising from the truth right away, as sellers can add great features to products that they aren't. Since it is difficult to recognize when advertising is false, a directive has been created that protects the interests of consumers and introduces the hallmarks of advertising fraud, which are characteristic of it. It is worth noting that this directive

¹⁶² Directive 2005/29/EC, *supra note 5*, Article 13.

is mainly aimed at B2Brelationships, but it excludes the protection of consumers as individuals because they are still less protected. In this regard, the safety of consumers from the negative consequences of misleading advertising is also carried out at the national level, for example, by contacting the CRPC. Also, at the European level, if the consumer is not satisfied with the decision of the local authorities, he can file a complaint with the European court.

Of course, consumer protection should be implemented in each country and at the level of the European Union as a whole because all unscrupulous business practices worsen the financial situation of buyers, who are an important link in making a profit in the state budget. However, it is essential to note that the problem lies in the financial issue and the safety of life and health of people. It should be pointed out that with the help of various illegal business practices, a person can buy a low-quality product and, most dangerously, lose his life. And most importantly, having a greater responsibility in case of purchasing defective products, the manufacturer may have criminal liability, which hinders the wide distribution of unsafe products. As a result, some countries have introduced stricter regulations regarding medical and health products and services, such as the Federal Republic of Germany.

Additionally, Particular attention should be paid to the topic of defective products and the protection of consumers in the event of the purchase of this type of goods. It is important to note that criminal liability may even arise for the production of defective goods. Especially if a person suffered because of a low-quality product and it was in the field of health. Under Article 17 of Latvian Law on the Safety of Goods and Services, the injured party has the right to request compensation from the manufacturer of low-quality goods from 275 to 14,000 euros.¹⁶³ I suppose that this can be improved so that in case of more severe consequences, the consumer can be compensated more in case of damage. After all, if we take an example from Directive 85/371/EC, then in case of severe damage to health, including when a person received a disability or even death, compensation should be at least 70 million euros.¹⁶⁴

Consumer protection is necessary because, in the case of unfair business practices, a person is exposed to misleading advertisements that may promise extraordinary results but are not. In addition to this, people can waste a lot of money, and the worst thing is that you can buy a defective product that can cause damage to your health. In order to deal with unfair business practices, countries have seriously thought about a unified system for protecting the interests of consumers in all areas. In connection with this, many laws, amendments, and directives have been created to protect consumers at the national level and the European level and in the international arena.

¹⁶³ *Supra* note 142.

¹⁶⁴ *Supra* note 144.

BIBLIOGRAPHY

PRIMARY SOURCES

EUROPEAN UNION'S LEGISLATION

1. 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 with EEA relevance, OJ L 149, 11.6.2005, p. 22–39. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>. Accessed April 10th, 2022.
2. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising with EEA relevance, OJ L 376, 27.12.2006, p. 21–27. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0114>. Accessed on April 28th, 2022.
3. Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29–34. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31993L0013>. Accessed May 1st, 2022.
4. 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. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01999L0044-20111212>. Accessed on April 25th, 2022.
5. Directive 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods with EEA relevance, OJ L 136, 22.5.2019, p. 28–50. Available on: https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2019.136.01.0028.01.ENG&toc=OJ:L:2019:136:TOC. Accessed on May 2nd, 2022.
6. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety with EEA relevance, OJ L 11, 15.1.2002, p. 4–17. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0095>. Accessed on April 27th, 2022.
7. 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, OJ L 210, 7.8.1985, p. 29–33. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31985L0374>. Accessed on April 10th, 2022.
8. Treaty on the Functioning of the European Union (Consolidated version 2012), OJ C 326, 26.10.2012. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>. Accessed on May 8th, 2022.

LEGISLATION OF REPUBLIC OF LATVIA

9. Krimināllikums (Criminal Law) (17 June 1998). Available on: <https://likumi.lv/ta/id/88966-kriminallikums>. Accessed April 20th, 2022.

10. Latvijas Republikas Civillikums (The Civil Law of the Republic of Latvia) (28 January 1937). Available on: <https://likumi.lv/ta/id/225418-civillikums>. Accessed April 3rd, 2022.
11. Negodīgas komercprakses aizlieguma likums (Unfair Commercial Practices Prohibition Law)(22 November 2007). Available on: <https://likumi.lv/ta/id/167759-negodigas-komercprakses-aizlieguma-likums>. Accessed May 1st, 2022.
12. Par atbildību par preces un pakalpojuma trūkumiem (On Liability for Defects of Goods and Services) (20 June 2000). Available on: <https://likumi.lv/ta/id/8683-par-atbildibu-par-preces-un-pakalpojuma-trukumiem>. Accessed on April 17th, 2022.
13. Patērētāju tiesību aizsardzības likums (Consumer Rights Protection Law) (18 March 1999). Available on: <https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums>. Accessed April 14th, 2022.
14. Preču un pakalpojumu drošuma likums (Law on the Safety of Goods and Services) (7 April 2004). Available on: <https://likumi.lv/ta/id/87664-precu-un-pakalpojumu-drosuma-likums>. Accessed May 3rd, 2022.
15. Reklāmas likums (Advertising Law) (20 December 1999). Available on: <https://likumi.lv/ta/en/en/id/163>. Accessed on May 10th, 2022.

OTHER LEGISLATION

16. Great Britain, Article 5 of The General Product Safety Regulations 2005(30 June 2005), available on: <https://www.legislation.gov.uk/ukxi/2005/1803/regulation/5/made>. Accessed on April 7th, 2022.

CASE LAW

17. Patērētāju tiesību aizsardzības centrs(Consumer Rights Protection Centre) 2012. Gada 23. oktobra spriedums lietā Nr. E03-PTU-K115-39, “Par tiesiskā pienākuma noteikšanu un administratīvā soda uzlikšanu, par negodīgas komercprakses īstenošanu, par kuru paredzēts administratīvais sods Latvijas Administratīvo pārkāpumu kodeksa 166.13 panta trešajā daļā”. Available (in Latvian) on: https://registri.ptac.gov.lv/sites/default/files/lieta_air_baltic_keksi_lemums_izraksts_2_3_10_12_2_.pdf. Accessed on April 20th, 2022.
18. Judgement of the Court (First Chamber) of 23 April 2009, *VTB-VAB NV v Total Belgium NV*, and *Galatea BVBA v Sanoma Magazines Belgium NV*, *Joined Cases C-261/07 and C-299/07*, ECLI:EU:C:2009:244.
19. Judgement of the Court (Fifth Chamber) of 26 October 2016, *Canal Digital Danmark A/S*, C-611/14, ECLI:EU:C:2016:800.
20. Judgment of the Court (Fifth Chamber) of 1 April 2004, *Freiburger Kommunalbauten GmbH Beugessellschaft & Co. KG v. Ludger and Ulrike Hofstetter*, C-237/02, ECLI:EU:C:2004:209.
21. Judgment of the Court (First Chamber) of 15 March 2012, *Jana Pereničová, Vladislav Perenič v. SOS financ spol. s r. o.*, C-453/10, ECLI:EU:C:2012:144.

22. Judgment of the Court (Sixth Chamber) of 7 March 1990, *GB-INNO-BM v Confederation du Commerce Luxembourgeois*, C-362/88, ECLI:EU:C:1990:102.
23. Judgement of the Court (First Chamber) of 19 September 2013, *CHS Tour Services GmbH v. Team4 Travel GmbH*, C-435/11., ECLI:EU:C:2013:574.
24. Judgement of the Court (Eight Chamber) of 13 March 2014, *Posteshop SpA – Divisione Franchising Kipoint v Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri*, C-52/13, ECLI:EU:C:2014:150.
25. Judgement of the Court of 8 April 2003, *Pippig Augenoptik GmbH & Co. KG and Hartlauer Handelsgesellschaft mbH, Verlassenschaft nach dem verstorbenen Franz Josef Hartlauer*, C-44/02, ECLI:EU:C:2003:205.
26. Judgement of the Court (First Chamber) of 16 June 2011, *Gebr. Weber GmbH v. Jürgen Wittmer and Ingrid Putz v. Contre Medianess Electronics GmbH*, C-65/09 and C-87/09, ECLI:EU:C:2011:396.
27. Judgement of the Court (Grand Chamber) of 21 December 2011, *Centre hospitalier universitaire de Besançon v Thomas Dutrueux and Caisse primaire d'assurance maladie du Jura*, C-495/10, ECLI:EU:C:2011:869.
28. Judgement of the Court (Fourth Chamber) of 5 March 2015, *Boston Scientific Medizintechnik GmbH v. AOK Sachsen-Anhalt — Die Gesundheitskasse, Betriebskrankenkasse*, C-503/13 and C-504/13, ECLI:EU:C:2015:148.
29. Judgement of the Court (Fifth Chamber) of 25 April 2002, *Maria Victoria González Sanchez v. Medicina Asturiana AS*, C-183/00, ECLI:EU:C:2002:255.
30. Judgement of the Court (First Chamber) of 4 June 2009, *Moteurs Leroy Somer v Dalkia France and Ace Europe*, C-285/08, ECLI:EU:C:2009:351.
31. Judgement of the Court (Second Chamber) of 21 June 2017, *N. W, L. W, C. W v. Sanofi Pasteur MSD SNC, Caisse primaire d'assurance maladie des Hauts-de-Seine, Carpimko*. C-621/15, ECLI:EU:C:2017:484.

OFFICIAL DOCUMENTS

32. European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *On the application of the Unfair Commercial Practices Directive. Achieving a high level of consumer protection Building trust in the Internal Market*, COM(2013) 138 final. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0138&from=EN>. Accessed on 4.05.2022.
33. European Commission. *Report from the commission to the European Parliament, the Council and the European Economic and Social Committee*, 2018. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:246:FIN>. Accessed April 19, 2022.

34. European Parliament, “Addressing unfair commercial practices in business-to-business relations in the internal market”, European Parliament, Directorate- General for Internal Policies, Policy Department, Economic and scientific policy A, (2011): p.14. Available on: [https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457364/IPOL-IMCO_NT\(2011\)457364_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457364/IPOL-IMCO_NT(2011)457364_EN.pdf). Accessed in: April 9, 2022.

SECONDARY SOURCES

BOOKS

35. Cseres Katalin Judit, *Competition law and Consumer Protection*. Hague: Kluwer Law International, 2005.
36. Cotter Barry, *Defective and Unsafe Products*. (London; Dublin; Edinburgh: Butterworths, 1996.
37. Durovic Mateja, *European Law on unfair commercial practices and contract law*, Oxford, Portland: Oregon, 2016.
38. Reich Norbert, Micklitz Hans-W., Rott Peter and Tonner Klaus, *European Consumer Law*. Cambridge: Intersentia, 2014.
39. Vītoļiņa Baiba, *Patērētāju tiesību aizsardzības pamati*. Rīga : Zvaigzne ABC, 2015.
40. Weatherill Stephen, *EU Consumer Law and Policy*. Northampton, MA: Edward Elgar Publishing, 2013.

JOURNALS

41. Argiros George, “The EEC Directive on General Product Safety”, *Legal Issues of Economic Integration*, Vol.21, Issue 1, (1994): pp. 125 – 154. Available on: Kluwer Law Online. Accessed on April 19, 2022.
42. Carballo-Calero Pablo Fernández, “Aggressive Commercial Practices in the Case Law of EU Member States”, *Journal of European Consumer and Market Law*, Vol.5, Issue 6, (2016): pp. 255 – 261, Available on: Kluwer Law Online. Accessed on April 17, 2022.
43. Dean Meryll, “Unfair Contract Terms: The European Approach”, *The Modern Law Review*, Vol. 56, No. 4, (June 1993): pp. 581-590. Available on: <https://www.jstor.org/stable/1096831>. Accessed April 19, 2022.
44. Handig Christian, “The Unfair Commercial Practices Directive –A Milestone in the European Unfair Competition Law?”, *European Business Law Review*, Vol. 16, Issue 5, (2005): pp. 1117 – 1132. Available on: Kluwer Law Online. Accessed on April 15, 2022.
45. Luzak Joasia Aleksandra, “Who should bear the risk of the removal of the non-conforming goods?”, *Zeitschrift für Europäisches Unternehmens- und*

- Verbraucherrecht* 1(1), (2012): pp.35-40. Accessed May 2, 2022. DOI:10.1007/s13590-011-0003-5.
46. Maddox Jon R., “Products Liability in Europe: Towards a Regime of Strict Liability”, *Journal of World Trade*, Vol. 19, Issue 5, (1985): pp. 508 – 521. Available on: Kluwer Law Online. Accessed on April 21, 2022.
47. Meier Stanislaus, Thomas Riehm, “Product Liability in Germany”, *Journal of European Consumer and Market Law*, Vol. 8, Issue 4, (2019): pp.161 – 165. Available on: Kluwer Law Online. Accessed April 20, 2022.
48. Nuseir, M.T., “Impact of misleading/false advertisement to consumer behaviour”, *International Journal of Economics and Business Research* 16(4), (2018): pp.453 – 465. Accessed on April 18, 2022. doi:10.1086/599247.
49. Ross Denton, “The Regulation of Advertising by the EC”, *European Business Law Review*, Vol. 2, Issue 1, (January 1991): pp. 2-28. Available on Kluwer Law Online. Accessed on April 16, 2022.
50. Valant Jana, “Consumer protection in the EU”, European Parliament, European Parliamentary Research Service, (September 2015): pp. 1-21. Available on: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf). Accessed on April 30, 2022.
51. Van Leeuwen, Barend, Paul Verbruggen, “Resuscitating EU Product Liability Law? Contemplating the Effects of Boston Scientific Medizintechnik GmbH v. AOK Sachsen-Anhalt and Betriebskrankenkasse RWE (Joined Cases C-503/13 and C-504/13)”, *European Review of Private Law*, Vol.23, Issue 5, (2015): pp. 899-916. Available on: <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/erpl0023&div=61&id=&page>. Accessed on April 21, 2022.
52. Wassermann Ursula, “Council of Europe – Consumer Protection”, *Journal of World Trade Law*, Vol. 8, Issue 1, (1974), pp. 1-132. Available on: Kluwer Law Online. Accessed on April 25, 2022.
53. Wright Kenneth B., “The Defective Product and Strict Liability”, *Law Notes for the General Practitioner*, Vol. 5, No. 3, (April 1969): pp. 23-32, available on: <https://www.jstor.org/stable/44029060>. Accessed on April 13, 2022.

WEBSITES

54. Consumer Rights Protection Centre. Consumer protection, available on: <https://registri.ptac.gov.lv/en/content/consumer-protection-0>. Accessed on April 18, 2022.
55. EUR-Lex. European Union directives. Available on: <https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html>.

56. European Commission, Misleading and comparative advertising directive, available on: https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en. Accessed May 5, 2022.
57. Krupp Law Firm. “Dangerous Or Defective Products Liability Lawsuits”. Available on: <https://krupplawfirm.com/dangerous-defective-products/>. Accessed on April 7, 2022.
58. Macrotrends. “U.S. population 1950-2022”. Available on: <https://www.macrotrends.net/countries/USA/united-states/population>. Accessed on April 7, 2022.
59. Misleading and comparative advertising directive, European Commission, accessed on May 5th, 2022. Available at: https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en.
60. UNCTAD, “Unsafe consumer products cost the US economy \$1 trillion each year”, published on 11 July 2018, available on: <https://unctad.org/news/unsafe-consumer-products-cost-us-economy-1-trillion-each-year>. Accessed on April 6, 2022.