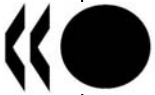


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**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY
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THE REPORT ON OECD MEMBER COUNTRIES' APPROACHES TO CONSUMER CONTRACTS

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	2
MAIN POINTS.....	4
INTRODUCTION	6
OVERALL TRENDS IN OECD MEMBER COUNTRIES' APPROACHES TO CONSUMER CONTRACTS.....	8
CONCLUSION.....	41
ANNEX. OECD MEMBER COUNTRIES' APPROACHES TO CONSUMER CONTRACTS	42

MAIN POINTS

1. Consumers make contracts in all walks of daily life – health care, housing, financial investment, telecommunication services and leisure services are some examples. In addition, with the increasing convergence of financial arrangements and consumer activities in modern life, consumers are prone to take on longer-term commitments. It is therefore necessary to review the regulations and legal rules pertaining to consumer protection in consumer contracts, in view of the asymmetry of information and bargaining power between business and consumers. At its 70th Session in October 2005, the OECD Committee on Consumer Policy agreed to a project called OECD Members Countries' Approaches to Consumer Contracts.

2. This report highlights both issues that are common to a number of OECD member countries and those that are more specific to certain OECD members. It provides basic materials for a common understanding of the issues and a basis for further discussions and perhaps some conclusions. The scope of this enquiry is limited to the four issues most often raised for consumer contracts: 1) Misrepresentation; 2) The seller's duty to supply information to the consumer; 3) Suitability or "Know your customer" rules; 4) Protection against unsolicited offers and pressure sales tactics.

3. The study was conducted in two stages. First, Internet resources and other materials were used as the basis of a preliminary study of the nature and extent of existing consumer protection. Second, member countries were consulted individually. Preliminary country reports and case-study questionnaires were sent to members and to the European Commission. These two sets of information were then combined into a full set of individual country reports in Part II of this report. In addition, a framework study considered this material, identified overall trends, provided an analysis and summarised each country's response to the questions asked concerning 11 case studies.

4. It should be noted that, with regard to the application of the law in each country, the four topics, especially topics 1 and 2, may overlap. Some overlap is also found between topics 2 and 3, between topics 2 and 4, and between topics 3 and 4.

5. The report concludes that, on the basis of the fairly large range of differences in the way in which the topics are handled by the countries surveyed, it may be appropriate for each member country to establish a system in accordance with its socio-economic circumstances, local idiosyncrasies and cultural characteristics (including legal culture).

6. Conclusions in relation to each of the categories surveyed are as follows:

- **Misrepresentation:** Prohibitions against fraudulent, negligent and innocent misrepresentation are treated differently by member countries. In general, it is possible to place countries under one of two headings, depending on whether they are common law or civil law jurisdictions. In common law jurisdictions, protection generally exists in the form of private law remedies available under statute, contract and tort law. In civil law countries, it is necessary to look more closely to see whether special laws exist and if so their extent, whether the matter is covered in the civil code, or whether some analogous private law principle, concerning for example fraud or mistake, is

applied. It is generally noted that these concepts may overlap or interact with positive obligations to provide information.

- ***Duty to provide information***: The extent and nature of obligations to provide information in the context of business-to-consumer transactions vary both from country to country and within countries from sector to sector. While a fairly considerable amount of basic protection is found in most cases, often with specific rules designed for a particular sector of consumer activity or some specific issue such as labelling, in general financial services and products are an area of heightened protection. There is overlap between this concept and the duty not to misrepresent.
- ***Suitability***: The concept of suitability, or “Know your customer”, currently exists more as a set of principles than as rules. However, fairly isolated specific protections are identified, as well as some limited capacity of pre-existing private law rules to provide protection. Given common issues of consumer vulnerability, there is some connection between this topic and unsolicited calls and pressure sales tactics. Advertising to minors is the area in which most of the protection identified is found, but financial services and products are also an area of heightened protection. The report considers how a suitability rule might be defined, but concludes that much remains to be considered, and it may take some time to introduce a general suitability rule into the consumer contract law system.
- ***Unsolicited offers and pressure sales***: Here again the range of solutions is wide, and this is an area in which protection can be identified in most but not all cases. Although unsolicited offers are not in themselves generally prohibited, some form of “cooling-off” provision is often used to allow a consumer to withdraw from such a contract within a limited and defined period. In certain cases, there are requirements concerning the information that should be supplied in the context of such transactions, and this creates overlap with topic 2. In particular, to the extent that the new media are involved in many such approaches to the consumer, this is a developing area. It can be concluded that, while the establishment of a private law rule on the prohibition of unsolicited offers would be significant, it is also necessary to allow business operators freedom of solicitation, or freedom of business activity.

7. Finally, the relationship between general private law and economic law remedies under all four of the above topics is discussed. Remedies for some of the practices discussed in the survey may be provided under private law, but equally these may be addressed as acts of unfair competition or unfair business practice under economic law. The issue then arises of the relationship between economic law and private law remedies, and of individual or only general protection for consumers as a group is provided. The report identifies differences among member countries as to how regulation by statutory laws, such as statutes to prevent unfair competition, is linked to legal effect under private law. The situation differs between countries in which such laws are considered a general part of domestic private law and countries that strictly confine such provisions to the domain of economic law, and are extremely cautious about directly linking them to legal effect under private law.

INTRODUCTION

Background

8. In the current increasingly globalised climate, in which information technology and other new technologies are rapidly increasing in sophistication, cross-border contracts are more frequent. The ageing of society and dramatic changes in the consumer environment also raise new issues. Consumers are faced with the need to engage in contracts across a broad spectrum of daily life and make longer-term commitments. In addition, consumer finance is increasingly involved in this activity, whether on a collateral basis to assist with a purchase or provide other benefits such as extended warranties, or by way of an increase in the marketing of financial products themselves. Various needs develop out of such trends. One is the need to provide for the co-ordination of dispute resolution on an international basis, and another – the subject of this report – is to review the regulations and legal rules for consumer protection in consumer contracts, in view of the asymmetry of information and bargaining power between business and consumers.

Purpose of the report

9. Information about the content, form and practice of legal measures concerning most important categories of consumer contract rules among OECD member countries was collected and analysed by the OECD consultant. The four categories were "obligation of information disclosure", "suitability rules (or 'Know-Your-Customer Rules')", "Rules on unsolicited offers and pressure sales tactics" and "Regulation on fraudulent notice or misrepresentation in the process of entering into consumer contracts". The report summarises overall trends for these issues and provides tables to assist with a better understanding of the basic data provided by member countries, illustrating current best practices and providing comparisons for policy-making purposes (see Annex). It provides basic materials for future discussions that may make it possible to draw some conclusions as to the best mix of solutions, whether private law rules, administrative rules, penal rules or self-regulatory rules, if any, in order to secure consumer interests, together with those of member countries' stakeholders as well as the CCP outreach activities.

10. For the four categories of consumer contract rules, overall trends are described. Information on the four categories of legal issues was initially collected by way of Internet research and the use of other accessible existing materials and was analysed. In addition, information was collected through member countries' responses to survey questions [DSTI/CP(2006)20].

11. The reasoning behind the use of these four categories is as follows:

1) Obligation of information disclosure in the process of making consumer contracts:

Consumers may be given insufficient explanations or information by businesses. As a general rule, consumers are responsible for their own actions but the imbalance in quality and quantity between the information which business have at their disposal and the information which is given to the consumer may therefore be exploited. For this reason, businesses should provide appropriate information about goods or services to consumers.

2) Suitability rules (or “Know-Your-Customer” rules):

Suitability rules are those that require businesses to make offers that take into consideration the specific characteristics and vulnerabilities of the consumers being targeted, such as the elderly, the disabled or young persons (especially their knowledge, experience, capacity for informed decision making and their assets). Specific consideration (suitability rules) may be required from a social standpoint for such categories of consumer in situations where the majority may to some extent be able to respond to, and compensate for, an information gap.

3) Rules on unsolicited offers and pressure sales tactics:

Unsolicited offers are offers made to consumers which are initiated by the seller as opposed to the consumer and are often characterised by high-pressure sales techniques using telephone or e-mail. These “technology” approaches supplement older methods such as the use of the postal service, or “door-stepping”. A new approach to the restriction of unsolicited offers may be deployment of the principle of consumer privacy protection.

4) Regulation of fraudulent notice or misrepresentation in the process of entering into consumer contracts:

Fraudulent notice or misrepresentation by business to consumers in the process of entering into consumer contracts may damage the targeted consumer as well as the function of fair market competition. Because of this, businesses are required to provide correct information about goods and services as well as the conditions of consumer contracts. The issues of fraudulent notice and misrepresentation are closely related to the issue of the duty to provide information. However, it is not always clear precisely where the boundary falls between a duty not to mislead and a duty to inform in a given situation, and it may require careful consideration of the responsibilities of each party. It is appropriate to treat the concepts separately.

12. The countries surveyed are the OECD member countries except Greece, Ireland, Luxembourg, Portugal and Turkey, for which there were limitations on the availability of information, and the European Commission.

13. Comments on the draft report and/or responses to the questionnaire were received from 19 countries (Australia, Austria, Belgium, Canada, Czech Republic, Finland, France, Germany, Hungary, Iceland, Japan, Korea, Mexico, Norway, Poland, Slovak Republic, Sweden, Switzerland, the United States) and the European Commission. Their kind co-operation is gratefully acknowledged.

14. This report highlights both issues which are common to a number of member countries and those which are more specific to certain countries, so as to provide a comprehensive review of the present situation. In Part I, the overall trends identified in this survey regarding the four types of problem are analysed mainly from the perspective of private law rules relating to consumer contracts. Administrative and penal law rules are also taken into account. A brief conclusion follows. Part II comprises a report from each member country.

OVERALL TRENDS IN OECD MEMBER COUNTRIES' APPROACHES TO CONSUMER CONTRACTS

15. The following discussion summarises the overall trends identified in relation to the four types of problems associated with consumer contracts. The problems are considered mainly from the perspective of private law rules relating to consumer contracts. However, administrative and penal rules are also taken into account, to the extent that such rules are important to, or inform, the analysis. In studying the subject matter from the viewpoint of private law rules, the order is as noted below, as it is the most logical for considering the close ties between two of the issues, namely the obligation to supply information and misrepresentation:

[I] Private law rules

1. Rules on fraud and misrepresentation in the process of entering into consumer contracts
2. Obligation to supply information
3. Suitability rules or "Know your customer" rules
4. Rules on unsolicited offers and pressure sales tactics

[II] Administrative and penal law rules

1. Relationship with private law rules
2. Variety of approaches

16. In this report, the term "private law" refers to laws that provide private remedies for consumers, while the term "administrative law" refers to the regulatory laws that authorise and provide for the powers of government agencies to act on behalf of consumers.

[I] Private law rules

Rules on fraud and misrepresentation in the process of entering into consumer contracts

17. Different issues arise in member countries depending on whether or not the concept of misrepresentation is recognised as a basic private law concept. In common law countries where the concept of misrepresentation has long been established, it is relatively easy to recognise a situation warranting the cancellation of a contract or liability for damages on this basis. The concept of misrepresentation is also closely tied to that of mistake in these countries.

18. It should be noted at the outset that misrepresentation in itself is not a concept that developed specifically in the context of, or is limited to, consumer contracts. Generally, it pre-dates the concept of the consumer. Connected with this are two important limitations on the effectiveness of the doctrine in consumer protection terms: *i*) it is in essence a negative obligation not to mislead, rather than a positive obligation to inform, although a positive duty to inform must in many circumstances be implied; *ii*) in common law countries, a positive obligation in the context of sales contracts certainly existed, but was on the buyer, in the context of the rule known as "buyer beware". Thus the duty of enquiry, which was the consumer's, placed boundaries on the extent of any duty to inform that might be implied to lie with the seller in the context of his duty not to mislead.

19. From this starting point, historically, more sophisticated and positive duties of information can be seen to have been imposed on the seller. Before reviewing some of these in the following sections, together with the other consumer protection issues surveyed, it is necessary firstly to review the extent to which a concept of misrepresentation can be found in the legal systems of member countries.

20. In the United States, the Uniform Commercial Code (UCC) clearly imposes contractual liability for engaging in material misrepresentation or fraud, and it grants remedies, including all remedies available under Article 2, for non-fraudulent breach (UCC §2-721). The Restatement (Second) of Contracts provides that the misrepresentation may prevent the formation of contracts under §163 in rare cases. §164 provides that a contract may be voidable in case of misrepresentation. Misrepresentation may be the grounds for a decree reforming the contract under §166. In the case of non-disclosure by a fiduciary, when making a contract with his or her beneficiary, the contract is voidable by the fiduciary under §173. While parties to a contract have a general duty to inform themselves of the contents of the contract [17A American Jurisprudence (AM.JUR.) 2d Contracts §209], a contract may be voided, or compensation for damages awarded, on grounds of material misrepresentation. Concealment or even non-disclosure may have the effect of a misrepresentation and may be considered fraudulent if it meets certain conditions (37 AM.JUR.2d Fraud and Deceit, §26). It should be noted that the theory of misrepresentation is available even in the absence of any contractual relationship [see Restatement (Second) of Torts §552 (1)]. These rights have been codified in certain statutory laws as well.

21. In Canada, a contract can be rescinded on the basis of a fraudulent, negligent or innocent misrepresentation or when a fundamental mistake has induced a party to enter into the contract. Depending on the type of misrepresentation or mistake, a contracting party may also be entitled to damages for breach of contract or in tort. These common law principles have been preserved in both federal and provincial legislation.¹ In Australia, under statute, corporations are prohibited from engaging in misleading and deceptive conduct as well as making specific misrepresentations (see the Trade Practices Act 1974, Part IVA, s.52 and 53; Part 7.9, Division 2 of the Corporations Act 2001). A number of other common law contract principles may also be relevant when a business has made a misrepresentation to a consumer.

22. On the other hand, in civil law countries the concept of misrepresentation is not always provided for in the Civil Code. However, in some civil law countries the doctrine of *culpa in contrahendo*, the basis of both theory and case law, has played an equivalent role. Furthermore, it is necessary to look to see whether or not such a concept is dealt with to any extent in special statutes (for example, the Consumer Contract Act of Japan, the Fair Labelling and Advertising Act of Korea, the Federal Consumer Protection Law of Mexico, etc.). It is also necessary to examine whether any other similar or related concepts under private law have been used to deal with situations of actionable misrepresentation (*e.g.* mistake, fraud and intimidation) in Austria, Belgium [the Act of July 14, 1991 on Commercial Practices and Consumer Information and Protection (LPC) Art. 23 (3)-(8) (prohibition of misleading information of advertisement)], Denmark (prohibition of incorrect, misleading or unreasonably perfunctory information), France, Finland, Germany [§§119, 123 the German Civil Code (BGB)], Hungary (prohibition of incorrect, inadequate and ambiguous information), Switzerland [(CO Art. 23 and 28; LCD Art. 3 (a), (b), (f), (i), (m) and 8], and Spain [Articles 1265 *et seq.* of the Civil Code), or error in Quebec, Canada [Civil Code of Quebec (C.C.Q.), Arts. 1399-1401)].

¹ For example, the Federal Competition Act [R.S.A. 1985, c.C-34 (Part VII.1)] provides administrative remedies, including cease and desist orders, public notification of the misconduct, payment of monetary penalties, etc., with a view towards promoting fair conduct rather than with a view towards punishment (Arts. 74.09 *et seq.*), and criminal penalties such as a fine or imprisonment when the offence takes place knowingly or recklessly (Art. 52). Other provisions in this scheme include at provincial level the Sale of Goods Acts, the Consumer Protection Acts, and the Business Practices Acts or Trade Practices Acts, which are equipped with a wide range of powers and remedies.

23. In the Netherlands, the Civil Code deals specifically with the tort of misrepresentation (Arts. 194-6, Volume 6, Civil Code) and there is also a provision in Item b, Section 8 of the Door-to-door Sales Act (*Colportagewet*) which prohibits an advertisement that causes misconception. In the Czech Republic, there are provisions in the Civil Code regarding liability for defects that deal with this issue (Art. 499 *et seq.*). The Czech Civil Code deals with misrepresentation both for consumers and contracts generally. It also provides for remedies in such cases for civil law suits.

24. The focus of Polish law in this area is placed on mislabelling, and while some provisions of the Civil Code may apply, the main protections are statutory in nature (such as the Act on Combating Unfair Competition, Arts. 3, 5, 8, 10, 14). Broader protection is available in the Slovak Republic where the concept of misrepresentation is seen as being within the context of, and as the reverse of, the duty to supply information. In Iceland, the concept can be identified in certain economic laws (*i.e.* statutory provisions in Competition Law No. 8/1993, Art. 21 and the Act on Financial Undertakings, No. 161/2002, Art. 106).

25. It can be concluded that there is a fairly broad range in the treatment of fraudulent, negligent and innocent misrepresentations in member countries and various different connections are made between the concept of misrepresentation and the general concepts of violation of public order and morals, violation of imperative provisions, wrongful conduct, etc. However, members' responses to the hypothetical cases show that they can be dealt with under the relevant laws in all countries.

26. In summary, the concepts of *i)* a duty to provide information in the context of consumer contracts and *ii)* a duty not to mislead or misrepresent overlap. This can be attributed to the broad scope of the principles which underlie the duty not to mislead and remain in application, even in the context of the development of a more focused duty to inform in consumer relations.

Members' responses to the hypothetical case studies

Case 1

Within the framework of a sale of residential land, a consumer concluded a contract believing the commercial seller's representation that there was no problem with the land, although there was a cliff nearby. Following the conclusion of the contract, the buyer discovered that he could not build a house on the land as he had planned. Instead, he would first have to construct a supporting wall. On the basis of this new discovery, the consumer would like to cancel the contract. What is the effect on a contract when the consumer has agreed to conclude it on the basis of fraudulent information or misrepresentation by the seller? What would happen if the consumer had been given such information prior to the conclusion of the contract?

Australia

There are some additional and specific protections for misrepresentation in certain categories under the Trade Practices Act 1974 (TPA 1974) such as misrepresentation in relation to land, s.53A, and prohibition against engaging "in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods" to which the Industrial Property Convention applies (s.55). The focal provision in the TPA 1974 is s.53, "False or misleading representations". The basic scheme is prepared with separate rules for financial services and products. The issue of whether the conduct in question was misleading or deceptive will depend on all the circumstances. One relevant circumstance may be the extent to which the consumer could be expected to inform himself of the relevant characteristics of the land by way of the Torrens system of land title registration. Further, if the consumer had any specific intentions regarding development of the land, it may be reasonable to expect the consumer to take steps to satisfy himself that the particular use to which he intended to put the land was possible.

Czech Republic

If the seller had known about important facts that would otherwise influence the consumer's decision and had not disclosed them to the consumer, he might be held responsible on the grounds that the relevant object's characteristics did not conform to the agreement. The consumer, before going to court, would have to complain to the seller and negotiate the consequences (§499 and following of the Civil Code). A court can declare a contract invalid if it is proved that it was concluded by mistake by a party who was not aware of a fact, whereas the other party was. If the consumer knew about the fact, there is no possibility of withdrawing from the contract.

Finland

The Consumer Protection Act does not apply to housing transactions. Instead the Decree on the information to be provided in the marketing of residences is applied. The decree establishes the information that a commercial seller must offer. Furthermore, the Law on broking of real estate and residential leases is applicable. According to the law, the real estate broker must give the buyer all the information that the buyer needs to know. If the broker intentionally fails to inform the consumer of certain important facts, the buyer is entitled to compensation for the loss that he suffers because of the broker's faulty action.

Japan

In this case Art. 4.1, item 1 of the Consumer Contract Act, which prohibits sellers from making an untrue representation with regard to a material item of the contract, can be applied and the consumer may rescind the contract. Furthermore, legal provisions concerning warranty against defects may allow rescission in the case of misrepresentations about known defects. If the seller supplied the information prior to the contract, it is difficult for the consumer to rescind the contract.

Furthermore, if a commercial seller's representation indicates that there is no problem with the land or the representation indicates nothing about a problem with the land despite the fact that it is necessary to construct a supporting wall after buying the land, the representation may be taken to mislead consumers in general into believing that the land is much better than it actually is, and thus it may violate the provision of Section 4 (1) (i) of the Premiums and Representations Act. The Fair Trade Commission of Japan (JFTC) may, in the event that there is a representation violating the provisions of Section 4 (1) (i), order the seller *a*) to announce that it has made a misrepresentation and then that it must cease the misrepresentation in order to eliminate the consumer's misunderstanding; *b*) to refrain from similar misrepresentations in the future; and *c*) to take measures to prevent the recurrence of a violation as well as other necessary measures. In addition, those who have suffered monetary damage as a result of the misrepresentation can make a claim for damages against the seller who has made the misrepresentation under the provisions of Section 6 (2) of the Act against Unjustifiable Premiums and Misleading Representations (the Premiums and Representations Act) and Section 25 of the Antimonopoly Act, as well as under the provisions of the Civil Law.

Sweden

Under Swedish law, the basic principle is "buyer beware". In a case where the buyer can sue the seller for misdescription of property, however, the remedies under the Land Code (1970:994), Chapter 4, Section 19 are reduction in price, cancellation of the sale or compensation for damages. If the issue was a misdescription of contractual terms, Section 10 of the Consumer Contracts Act (1994:1512) may give the buyer the right to terminate the contract. For deceit, Section 30 of the Contracts Act (1915:218) is available. The Marketing Act (1995:450), Sections 3, 14, 19, may also apply if marketing is not in accordance with good practice.

United States

In this case, if the seller knew about the defect and misrepresented its existence, then the seller would be liable for misrepresentation and fraud. This misrepresentation is material to the real estate contract because the consumer would not have purchased the land had he or she known. This misrepresentation of a material fact may render the contract voidable, and the seller may be liable for damages to the consumer as a result.

European Commission

EU legislation on consumer contracts does not apply to this case. Rules on fraud and misrepresentation can be found in the contract laws of the member states.

<p>Case 2</p> <p>A consumer concluded a TV broadcasting contract after having been assured by the company's seller that the contract could be cancelled at any time. Contrary to that statement, the consumer was in fact prevented from terminating the contract for four years. As he would not have entered into the contract if he had known this, the consumer would like to cancel it. What is the effect on the contract when a consumer has agreed to conclude it on the basis of fraudulent information or misrepresentation by the seller? Would it be different if the consumer had been notified of such information prior to the conclusion of the contract?</p>
<p>Australia</p> <p>See Case 1, although references specific to the sale of land contained therein would not be relevant in this circumstance.</p>
<p>Canada</p> <p>The seller has likely committed an unfair practice in making a false representation concerning the rights, remedies or obligations associated with the agreement, in falsely asserting it may be cancelled. This is a specific form of misrepresentation that most Unfair and Deceptive Acts and Practices (UDAP) statutes prohibit [see Consumer Protection Act, 2000 (CPA 2002), s.14(2)13] under Ontario law. Accordingly, as noted for other unfair practices, the seller has committed an offence and the consumer has a one-year right of rescission.</p>
<p>Czech Republic</p> <p>The same answer as in Case 1 applies.</p>
<p>Finland</p> <p>The Consumer Protection Act applies in this case. According to that law, false or misleading information shall not be conveyed in marketing. If the goods do not conform to the information given by the seller as to their characteristics or use, when marketing the goods or otherwise before the conclusion of the sale, the goods are defective. If the goods are defective, the consumer ultimately has the right to cancel the contract.</p>
<p>Japan</p> <p>In this case, the seller has made a misrepresentation with regard to a material item. Therefore this falls under Article 4.1, item 1 of the Consumer Contract Act, and he/she can withdraw from the contract. Even if the consumer had been notified of such information prior to the conclusion of the contract, the clauses stating that the consumer was forbidden to terminate the contract for four years may be void and in violation of Article 10 of the Consumer Contract Act.</p> <p>Furthermore, if a customer is not able to cancel a contract providing TV reception for four years despite the fact that the seller had explained to the customer that the customer could cancel the contract at any time, the representation may violate the provision of Section 4 (1) (ii) of the Premiums and Representations Act. In this case, the same legal actions can be taken as in Case 1.</p>
<p>Switzerland</p> <p>If the contract in question is described as a contract of mandate, Art. 404, Al.1, Code of Obligations (CO) applies. This provision envisages the possibility of terminating the contract at any time. Any contractual clause to the contrary is null and void.</p>
<p>The United States</p> <p>If the terms were misrepresented or misconstrued purposefully by the seller, then the contract may be voidable for misrepresentation, and the seller would be liable to the consumer for any pecuniary damages resulting from the misrepresentation of the contract. 37 AM. JUR. 2d <i>Fraud and Deceit</i> §275.</p>
<p>The European Commission</p> <p>Directive 93/13/EEC on Unfair Contract Terms may apply. A term which states that a consumer has read and understood all the terms, whereas in fact he did not even have the opportunity to read and/or understand them, could well be considered "unfair". Rules on fraud and misrepresentation can be found in the contract laws of the member states.</p>

*Obligation to supply information*²

27. The duty to supply information arises in member countries in two contexts. In the first context it is a set of general principles or guidelines which provides the framework for how consumer contracts should be formed. Examples are the definition of a duty to supply information in the French Consumer Code (Art. L.111-1), as well as the explanation of the "duty to supply information model" in the EU and in Danish and German laws. In Spain, too, the General Law for the Defence of Consumers and Users stipulates that one of the basic rights of consumers is to receive correct information (Art. 2). A general private law duty of supplying information is also discussed in the context of liability arising from negligence upon the conclusion of contracts (*i.e. culpa in contrahendo*) under Austrian and German law [§311 (2) BGB]. Japan and Korea have a different framework under their Consumer Contract Acts; there are only general provisions regarding a duty to supply information, and it is merely an obligation to make an effort. These rules apply at the inception of the contract.

28. In the second context, specific legal rules are used to resolve disputes arising out of contractual relationships after their formation and by referring back also regulate how contracts should be formed. In France, for example, some aspects of the duty to supply information can be seen to have developed out of an expanded theory of fraud and are dealt with by applying the legal concepts of fraud (Civil Code, Art. 1116), mistake (Civil Code, Art. 1110), and public order violation (Civil Code, Art. 1133). This is similar to the situation that has existed in the Netherlands since the introduction of its new Civil Code in 1992 (see Arts. 44, Vol. 3 and 228 Vol. 6 of the Civil Code), absent the third element, public order violation.

29. It can be seen that, in a sense, the first context has emerged from the second. This to some extent reflects the general historical trend identified in paragraph 19 above. But it should also be noted that principles or rules under general private law have been established in response to developments peculiar to each member country. It is also noteworthy that in certain cases the duty to supply information in the first context is understood to be either a part of the principle of private autonomy and the right to self-determination, as in Germany, or an administrative intervention for the sake of consumer protection or a restriction on private autonomy and self-determination, as in France.

30. As noted, in common law countries the duty to supply information may overlap with the law of misrepresentation and there are also associations to some degree with the duty of disclosure in the context of theories of misrepresentation and mistake. It has also been recognised, however, that there has been interplay with an important limiting principle to the duty of disclosure in sales contracts generally, namely that of "buyer beware". Many modern obligations to supply information impose positive duties on sellers that peg back the ambit of this older principle.

31. In New Zealand, following the Anglo-American common law tradition, the broadest duty of disclosure arises from the law of misrepresentation. The Contractual Remedies Act 1979 extends the remedies for breach of contractual promises to misrepresentations, involving both rights to damages and/or cancellation of the contract. In Australia, the principle of "unconscionable conduct", often understood as a general private law norm in its common law jurisdictions, has been specifically expressed in the relevant legislation (see Trade Practices Act 1974, Part IVA – Unconscionable conduct: s.51AA and s.51AB, the Australian Securities and Investments Commission Act 2001, Part 2, Division 2, Subdivision C –

² In this section only, instead of the term of "Obligation of Information Provision", "Obligation to supply information" is used. In following sections and the country reports, the term is left as originally proposed for this survey.

Unconscionable conduct: s.12CA and s.12CB). The legislation prohibits corporations from engaging in unconscionable conduct and provides a number of factors which may indicate that unconscionable conduct has occurred (including whether the consumer was able to understand documents relating to supply or possible supply). The legislative provisions codify and extend the common law principle of unconscionable conduct. In addition, there is a general prohibition against “misleading or deceptive conduct” or “false or misleading representations” which may include silence or omission, and therefore may imply a duty of disclosure if, in the circumstances, fairness requires it [Trade Practices Act 1974, Part IVA, s.52]. Australia’s clearest duty of disclosure is in the area of financial services; where providers of financial products have positive obligations to provide investors with a product disclosure statement (PDS). Part 7.9, Division 2 of the Corporations Act 2001 sets out the circumstances under which a PDS is required, and the information to be included in it. Similarly in the United Kingdom, while common law rules govern the field generally, specific business areas (mainly financial services but also business areas in which agents predominate, such as property and travel) also have their own legislative rules.

32. As for the legal remedies and legal consequences arising from a violation of the duty to supply information, these include a claim for compensation for damage caused, for example, in Austria, Denmark, Germany [*e.g.* §282 BGB in connection with §241 (2) BGB], Sweden [Consumer Sales Act (CSA)], the United Kingdom [in case of misrepresentation, Misrepresentation Act 1967 s.2 (1)] and the United States. Under present law in France, a claim for compensation for damages is provided for by Article 1382 and the draft revision of the liability law published in September 2005 also prescribes that a violation of a duty to supply information incurs liability for compensation for damages (Art. 1110-1). Another category of remedy is injunctive relief, and a claim for injunction is provided, for example, in Austria [*Konsumentenschutzgesetz* (KSchG)], and Germany [*e.g.* §8 Unfair Competition Act (UWG)]. In Finland, the Market Court or the Consumer Ombudsman can order an injunction when business is unfair [Section 7 in Chapter 2 of the Consumer Protection Act (CPA)]. Sweden takes almost the same stance as Finland (CSA). As a further remedy, the invalidity or cancellation of a contract [for example, in Belgium (LPC, Art. 88), France, the Netherlands or Spain], or the right of discharge of a contract, etc., is available. In many member countries, irrespective of their legal theories, these remedies are sometimes associated with additional administrative remedies and even criminal sanctions.

33. In terms of specific legal effects, in Germany a violation of the duty to supply information can be dealt with by using the right of withdrawal (§§312d, 355 BGB), which is a system that is theoretically separate from defect of declaration of intention. In the same way, in France the effect of a violation of the specific information provision prescribed in the Consumer Code can be dealt with by application of the right of withdrawal. In the Czech Republic an extension of the period of right of withdrawal is provided in connection with a violation of the duty to inform (Czech Civil Code Art. 54, etc.). Very similar treatment is provided in Belgium, especially in the case of distance communication (LPC Art. 80). In Poland a specific right of withdrawal is provided for when there is a breach of data provision obligations for contracts that are concluded at a distance or away from business premises (Act on the protection of certain consumer rights and on liability for damage caused by a dangerous product, Arts. 1-4, 7-9, 13). In the Slovak Republic less serious failures in the duty to inform leads to a price discount, while in more serious cases the buyer may withdraw from the contract.

34. Furthermore, duties to supply information may be found in sets of special statutory laws. In such cases, statutes are enacted to be applicable to specific situations and represent developments of the private law rules regarding a duty to supply information. In Germany, and to some extent in Poland (Act on competition and consumer protection), the duty to supply information is dealt with from the viewpoint of an act of unfair competition (*i.e.* a claim for injunction under §8 UWG, a claim for skimming off of profits under §10 UWG). This approach is commonly found in Europe, where EC directives have been promulgated both in a “horizontal” manner (*i.e.* the new Unfair Commercial Practice Directive) and in connection with various kinds of consumer law, regarding duty to supply information, and are each

designed to deal with different specific areas of law (*e.g.* timeshare, doorstep or distance selling, etc.). For instance in Italy, with regard to consumer information in distance contracts, §52 Consumers' Code implements certain provisions of Directive 2000/31/EC dated 8 June 2000. In Hungary, Gov. Decree 17/1999 (II.5) on distance contracts, Gov. Decree 20/1999 (II.5) on timeshare, and Gov. Decree 370/2004 (XII.26) on doorstep selling are implementations of European directives.

35. In Canada, under the federal Competition Act [R.S.C.1985, c. C-34 (Part VII.1)], sellers and suppliers are subject to “adequate and fair” disclosure requirements, while this and several other federal statutes stipulate more specific disclosure requirements in telemarketing sales, multi-level marketing schemes, banking/consumer credit transactions and other matters under federal jurisdiction, and impose product labelling requirements and standards for goods and services, including hazardous products, food and drugs, and motor vehicle safety. At the provincial level, special disclosure requirements are stipulated for various types of agreements such as Internet agreements, direct and remote agreements and credit agreements under each province’s Consumer Protection Act, Unfair Practices Act, or in the statutes and regulations relating to specific business sectors. Violations of such requirements can result in administrative fines, cease and desist orders and, rarely, imprisonment, and they generally give rise to a statutory right of civil action to seek rescission and/or damages. Finland and Sweden are in the same category, and their Consumer Protection Acts provide for a general rule for disclosure. In Mexico, information disclosure requirements are also laid out in the Federal Consumer Protection Law of Mexico (FCPL) and its Regulations, under which a government agency is authorised to enforce compliance and impose monetary penalties for non-compliance.

36. Members’ responses to the hypothetical cases show that the issue relevant to Case 3, intentionally hidden important information, can be dealt with by the relevant law in most members, but the hidden future price reduction in Case 4 usually cannot. The views among members are mixed on the issue of whether a consumer who in fact does not have the opportunity to read/understand a contract terms is bound by those terms.

37. When considering the structure and content of a duty to supply information as a private law rule, it is necessary first to determine what kind of private law effect or consequence will arise from violation of the duty, and next to consider what kind of information about the consumer contract should be disclosed, in line with such effect, while comparing it with the range of principles or rules available under the traditional private law peculiar to each member country. At the same time, the law of misrepresentation must be taken into account. Finally, since these are laws which arise in a context that is both economic and social, a careful balance needs to be struck between what might be seen as the economic objective of encouraging business activity and the social objective of promoting fairness and preventing the exploitation of any imbalance in the business/consumer relationship, whether it arises from lack of information in itself or consumers’ behavioural bias against information, or from consumer vulnerabilities which create difficulties in processing information.

Members' responses to the hypothetical case-studies

Case 3

A consumer bought a flat on the first floor of a building, taking into account and believing the commercial seller's promise of a "good view and much sunshine" due to vacant land next to the building. Six months later, a new building was constructed on the vacant land which obstructed the good view and sunshine. While the seller knew perfectly well that a building would be constructed next to the flat when he sold it, at the time of signing he intentionally decided not to disclose this information to the consumer. What is the effect on a contract when the seller intentionally fails to inform the consumer of certain important facts? Would this case be treated differently if the seller had not known about the building plan before signing, but could easily have found out by making a simple enquiry of the owner of the vacant land?

Australia

At the outset the seller's representation was correct. Therefore, none of the specific provisions of the TPA prohibiting false or misleading representations are likely to apply. However, there may have been the failure to alert the purchaser as to the impending development, and therefore misleading and deceptive conduct. Australia's property law framework may also affect remedies available to the consumer. Under the Torrens System of title registration, any development applications are lodged with a central register, which is publicly available. Consequently, a purchaser is presumed to know about developments or zoning laws that may have an impact on the land in question. In the case provided, the consumer might have had a duty to find out what kind of development was permitted on the land before the purchase of the flat.

Czech Republic

If the seller had known about important facts that would otherwise influence the consumer's decision and had not disclosed them to the consumer, he might be held responsible under the duty to supply information. The consumer, before going to court, would have to complain to the seller and negotiate the consequences (§499 *et seq.* of Act No. 40/1964, Civil Code). Nevertheless, worth mentioning is also the possible application of §49a of the same Act, which provides that a legal act is invalid if it is carried out by a party who was not aware of a fact, whereas the other party was aware of the fact, and that fact was substantial in the context of making the decision.

Finland

The same answer applies as in Case 1.

Japan

This case falls within Article 4.2 of the Consumer Contract Act which prohibits a seller from asserting advantageous facts regarding a material item in the contract while intentionally withholding disadvantageous facts about the same item. A consumer who can prove that the seller acted in violation of Article 4.2 may withdraw from the contract without penalty.

Furthermore, if the representation of a flat indicates a "good view and much sunshine", it is conceivable that consumers in general will reasonably expect that the "good view and much sunshine" condition of the flat would continue for a certain period. Therefore, if a seller promised a "good view and much sunshine" and sold the flat despite the fact that the seller knew that a new building would be constructed next to the flat and that the view would be obstructed, this may violate the provision of Section 4 (1) (i) of the Premiums and Representations Act. In a case in which there is a great deal of space next to the flat, if the seller made the representation of a "good view and much sunshine" without examining what construction was planned for the space, that may violate the provisions of Section 4 (1) (i) of the Premiums and Representations Act to the same extent as a case in which the seller actually knew that a new building would be constructed next to the flat. Legal action can be taken as in Case 1.

Mexico

It is the seller's obligation to provide the consumer with the information that a new building was going to be constructed next to the apartment building, which would change the apartment's conditions. Article 1 paragraph III of the Federal Consumer Protection Law of Mexico (FCPL; *Ley Federal de Protección al Consumidor*) applies in this case. Consumers must be given all the necessary information concerning the contract. In addition, Article 37 of the FCPL requires that if the information given is inaccurate, the goods or services must be adjusted so as to conform to the information, instructions, data and promised or suggested conditions that were given, in addition to any sanctions that may apply in accordance with federal law. If this is not possible, the consumer can claim compensation for costs incurred, as well as additional damages.

In addition, within the Mexican legal framework, and particularly in Article 1795 of the Civil Federal Code, it is established that a contract may be derogated from, or invalidated, if there are flaws or defects in consent.

Sweden

As with some of the other countries surveyed, while there is not a primary obligation to supply information in this case, there is a secondary obligation that any information supplied that describes the item must be accurate. In Sweden the Consumer Sales Act (1990:932) would not apply to the sale of a house, but the Sale of Goods Act (1990:931) would.

Switzerland

A salesman who promises "a good view and much sunshine" is held to the guarantee within the meaning of Art. 197 of CO. Promised quality must exist at the time of the contract signature.

United States

US courts would decide the answer to this question on the basis of state law governing contractual disputes. This question hinges on the promise made by the seller, and the effect of the renege promise depends on whether the seller knew the view would be obstructed, and whether the promise of a view was a material factor in the consumer's decision to purchase the property (37 AM. JUR. 2d *Fraud and Deceit* §235).

In the context of a real estate transaction, if the seller knows of facts materially affecting the value or desirability of the property and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the undisclosed facts are material if they would have a significant and measurable effect on market value or cause loss to the purchaser [37 AM. JUR. 2d *Fraud and Deceit* §235, citing *Assilzadeh v. California Federal Bank*, 82 Cal. App. 4th 399, 98 Cal. Rptr. 2d 176 (2d Dist. 2000)]; but see *Goldman v. Strough Real Estate, Inc.* [2 A.D.3d 677, 678 (N.Y. App. Div. 2003) (case holding that a seller could not be held liable for a future promise that the buyers – "experienced" business people – could have investigated and uncovered themselves)].

In the Goldman case, the consumer took into account and believed the seller's promise of a good view and sunshine; however the court stated that it was unclear whether or not the view and presence of sunshine would have any effect on the value so the materiality of the promise is debatable. If the consumer paid a premium for the good view and sunshine, then the misrepresentations as to both would be material.

In a similar case, buyers paid a premium for a lakefront condominium unit with an unobstructed view of the lake, and a developer later constructed a building that impaired the buyers' view. The buyers' action for breach of contract and fraudulent inducement was successful. Although the developer's misrepresentation to the buyers about the view of the lake when the contract was formed was only untrue after the later construction, the court found that the developer knew at the time the statements were made that they were false. The court also found the misrepresentations to be material because the buyers, in reliance on the statements, paid a premium for the condominium [*Whiteco Properties, Inc. v. Thielbar*, 467 N.E.2d 433 (Ind. Ct. App. 1984)].

European Commission

No EC consumer protection legislation regulates the contractual effects of the situation described. EC consumer contract law does not cover the sale of immovable property [note however that there is a directive on the purchase of timeshare properties, the Timeshare Directive (Directive 94/47/EC)]. Only the contract laws of the EU member states apply.

Case 4

A consumer bought a cellular phone in a shop in which there was an advertisement that the price of the cellular phone was reduced by 20%. Two weeks later, the price of the same phone was reduced to 50%. At the time of the sale, the seller knew that he would lower the price of the phone in the following weeks. However, he failed to inform the customer of this. What is the effect on a contract when the seller intentionally fails to inform the consumer of certain important facts? What happens if this failure is caused by negligence?

Australia

A failure to inform the purchaser of important information may be a breach of the TPA if it creates a misleading impression or misrepresents the nature of the product. In this specific circumstance, it is unlikely that the fact that the sale will be further discounted would be considered sufficiently important to be a breach of the TPA.

Further, it is rational for businesses to seek to sell products and services at the highest price the market will support. If products do not sell at a particular price, they may be discounted and put on "sale". If they do not sell at an initial discount price, they may be further discounted. While a business may assume that products will be further discounted if they do not sell, there is no guarantee that further discounts will happen as the products may sell at the intermediate price. Hence the business is under no obligation to inform the consumer that the price may subsequently further be discounted.

Czech Republic

According to Czech legislation, the entrepreneur is not obliged to make public his business intentions. Consequently, in this case, we do not see any breach of law. However, the case would be treated differently if the seller informed consumers about reductions and there would be, in reality, no price decrease as compared to any time period before the proclaimed reduction.

Finland

In this case, the Consumer Protection Act is the applicable law. According to the law no conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. Marketing that does not convey information necessary in respect of the health or economic security of consumers shall always be deemed unfair. If the consumer has not received all necessary information in marketing, he may ultimately have the right to cancel the contract.

Japan

As the seller was simply unaware of certain material information relating to his positive representations, Article 4.2 does not apply and the consumer cannot withdraw from the contract on this basis.

Furthermore, the act of selling a product at a 20% reduced price after deciding to sell it at a 50% reduced price in the near future does not violate the Premiums and Representations Act as long as the comparison price of the product (*e.g.* the suggested list price, "the regular price" at which products have actually been sold for a certain period) at the time of selling is appropriate. However, if, at the time of selling a product at a 20% reduced price, the seller makes a representation that this is "the final reduction", indicating that the seller will not set a lower price in the future, the representation may violate the provision of Section 4 (1) (ii) of the Premiums and Representations Act if that does not in fact prove to be the case, and the price of the product is subsequently lowered. Legal action can be taken as in Case 1.

Mexico

Even if it is the providers' duty or responsibility to inform the consumer of all important facts that

are relevant to any particular transaction, within the Mexican legal framework it is not the providers' obligation to give the consumer details of future sales. Thus, in this case, there would not be a direct violation or breach on the seller's side in relation to information not given to the consumer.

Sweden

Where the sale is of consumer goods, the Consumer Sales Act (1990:932), Section 16 para. 3 point 2 requires certain information to be given before the sale, but not in relation to a forthcoming reduction in price.

Switzerland

The salesman does not have an obligation to inform the consumer about the later reduction of 50%. One contracting party need not spontaneously concern itself with the interests of the other contracting party (see decision of the Federal Court, SJ 1961, p. 127). Such an obligation might exist, however, in contractual relations in which there is implied an increased duty of trust and confidence (such as an agency for example). The sale does not form part of such a relationship. The omission is not relevant.

United States

In this case, the seller intentionally failed to inform the consumer of facts. The established law tends to take the stance that seller and buyer do not stand in any relation of confidence to each other, and there is, as a general rule, no duty of disclosure on the part of either (37 AM. JUR. 2d *Fraud and Deceit* §212). States in the United States do not require sellers to disclose future sales to consumers. However, some sellers maintain policies that allow consumers to obtain the difference in price if an item is placed on sale within a certain time after its purchase.

European Commission

Sale of goods is covered by the Consumer Sales Directive,³ which, among other issues, lays down rules on conformity of goods with the contract and remedies in case of a lack of conformity. In addition, some directives, e.g. the Distance Selling⁴ and the Timeshare Directives⁵, provide for certain pre-contractual information obligations. However, there is no rule in existing EU consumer contract law imposing an information obligation on the seller in the situation described in the example. If such obligations exist, they must be sought in the contract laws of the member states.

³ 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.

⁴ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997.

⁵ Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis, OJ L 280, 29.10.1994.

Case 5

A consumer enters into an investment savings contract. Very detailed rules (many pages) are shown to the consumer before signing, without however giving him a reasonable opportunity to read and understand all of them. Six months later, owing to a change in circumstances, the consumer would like to cancel the investment and get back the money he has already invested. However, in accordance with rules and charges that were not clearly explained to him at the time of signing, the consumer does not get his money back. Is the consumer bound by all the terms of the contract if he did not have a reasonable opportunity to read and understand them before signing? Is he bound by a contractual term, stating that the consumer has read and understood the terms and conditions of the contract, which are binding, while in fact he has not read or understood these terms and conditions?

Australia

The general rule is that a consumer will be bound by the terms of the contract unless the business is found to have engaged in unconscionable conduct, some other breach of the TPA, Australian Securities and Investments Commission (ASIC) Act or common law framework. The TPA and ASIC Act provide a non-exhaustive list of factors the court will consider in determining whether unconscionable conduct has been engaged in, including whether the consumer was able to understand any documents relating to the product or service and whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer. The ultimate findings of the court will depend on the circumstances under which the contract was entered into.

Finland

See Case 4.

In this case the rules shown to the consumer are apparently standard terms. Standard terms must be attached to the contract, so that they cannot become a part of the contract without the consumer's knowledge. The consumer may sign a contract form, on which the standard terms are written, or the terms may be referred to in the contract, if the reference is explicit and specified. It makes no difference whether the consumer has actually read the terms or not, but they must have been available and the consumer must have had the opportunity to read them. If the consumer did not have the opportunity to read the terms before signing the investment savings contract, the contract is not binding. Furthermore, if the standard terms include a surprising and onerous condition, it must be specifically brought to the attention of the consumer in order to become a binding part of the contract.

Japan

The consumer's lack of a reasonable opportunity to read and understand all the terms in a contract before agreeing to it is not, in and of itself, a valid basis for the consumer to withdraw from that contract. While Article 3 of the Consumer Contract Act warns sellers to provide the necessary information on consumer rights and duties and other such details set forth in the consumer contract, this is simply an advisory provision to oblige sellers to make an effort. Therefore, the consumer cannot back out of the contract and claim any damages on the basis of the Consumer Contract Act as a result of his inability to have fully appreciated the terms of the contract he entered into, although he may be able to claim certain damages because of a violation of the duty of explanation and loyalty based on the Civil Law.

Furthermore, any description in a written contract is not usually considered to be a "representation" by the Premiums and Representations Act. Thus, if the question concerns a description in a written contract, no issue arises under the Premiums and Representations Act. However, if the specific terms for refund are not clearly described in the brochure of a financial commodity, the representation may violate the provision of Section 4 (1) (ii) of the Premiums and Representations Act. Such cases include those in which customers do not receive their money in spite of the fact that there was a representation to the effect that they would be refunded for the remaining contract period if they cancelled the contract before maturity. In such circumstances, legal action can be taken as in Case 1.

Mexico

In Mexico, the FCPL establishes in Article 90 that a contract will not be valid, and thus will be deemed not to be included in the registry, in certain specified situations including when it: *i*) allows the supplier to unilaterally amend the contents of the contract, or unilaterally to evade its obligations; *ii*) releases the supplier from its civil liability, except when the consumer breaches the contract; *iii*) transfers to the consumer or to a third party, which is not a party to the contract, the civil liability of the supplier; *iv*) sets out terms concerning the statute of limitations shorter than legal ones; *v*) stipulates the performance of certain formalities so that the actions brought against the supplier may be legally admissible; and *vi*) binds consumers to waive the protection of the law or submit to the jurisdiction of a foreign court.

Thus, it is not lawful for the supplier, with whom the consumer has agreed a contract, to change unilaterally, in a substantial manner, the terms of that contract and not return to the consumer the amount invested. Profeco (*Procuraduría Federal del Consumidor*, Consumer Protection Federal Agency of Mexico) may defend the consumer's rights when a supplier does not respect what has been previously established. Besides, the supplier must be sure that the consumer has clearly understood the duties to which he/she is agreeing. It is to be emphasised that the ideal in all contracts is that the obligations to be imposed must be comprehensible and that all the clauses of the commitment are set out. For these reasons, consumers are frequently provided with an explanation of the relevant features of a transaction.

Sweden

When financial advice is involved, the Financial Advisory Services to Consumers Act (SFS 2003:862) protects consumers. Here, the information obligations flow both ways and the financial adviser is expected to obtain as well as give certain information. The Securities Business Act (SFS: 1991:981) is one of many other provisions relevant to specific fields. A supervisory body (*Finansinspektionen*) issues codes and guidelines. For redress there is the National Board for Consumer Complaints.

Switzerland

Swiss law provides for the incorporation of general contractual conditions (Article 1 CO and the principle of good faith). The consumer must be informed of the existence of the general conditions and must have the possibility of examining them, which implies in particular that they are written clearly. A reference, with a document accessible to the consumer, is sufficient. A clause is valid unless it is seen as a strange or unusual clause. If the clause modifies the balance of the contract or derogates from the rules of statute (FRA 109 II 452; 119 II 443) then it is not incorporated into the contract unless it is specifically drawn to the consumer's attention. In this case, the clause is not necessarily strange and it is likely to stand as the cancellation of the contract applies to the future and does not affect the executed services.

United States

Although the consumer in this scenario did not thoroughly read and understand the very detailed rules of his investment contract, the law nevertheless states that one who executes a contract cannot void it on the grounds that he did not read it or was ignorant of its terms. Under the law in most states, the contract is probably enforceable against the consumer despite the consumer's lack of understanding of the terms, unless that lack of understanding was due to mental infirmity.

European Commission

It may be governed by the Directive on Unfair Contract Terms.⁶ Under this directive standard contract terms which are found to be unfair in business-to-consumer contracts are not binding on consumers. Moreover, standard terms shall be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. A term which states that a consumer has read and understood all the terms, where in fact he did not even have the opportunity to read/understand them, could well be considered "unfair". It is for the national courts of the member states to evaluate the fairness of a term and to ensure that adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers and suppliers.

Suitability rules or "Know your customer" rules

38. A general private law rule defining "suitability" was not identified in any of the member countries, even in the specific context of consumer contracts. However, even in those countries where a general suitability rule itself is not found, the situation may be similar to an unsolicited call in that a private law effect (such as nullification or cancellation of a contract, compensation for damages, etc.) can be granted as a violation of public order and morals, a mistake, a violation of a duty to supply information, an abuse of situation, etc. (especially in Germany, France, the Netherlands, and, to some extent, the Slovak Republic). For example, in Germany, if a contract is *contra bonos mores* or contrary to public policy, the contract is void (§138 BGB). Thus, if a contracting party abuses circumstances and imposes a contract on another party that is unable to protect itself, the contract may be void. Moreover, in case of a standard contract form, any unreasonable disadvantage to consumers created by the incorporation of the terms is prohibited (§307 BGB). In France, there are no general rules regarding the suitability test and thus no general sanctions attached to the obligation of the business to know its customer. The Consumer Code only provides that a bank will not be able to enforce a manifestly disproportionate surety agreement if it did not actively inquire into the financial capacity of the guarantor (Art. 341-4). Otherwise, the rules of good conduct imposed on certain professionals (investment service providers, financial door-to-door sellers, providers of asset management or of insurance products) only provide for penal or disciplinary sanctions. The consumer will obtain the cancellation of the contract or damages if he or she is able to prove that he or she has been the victim of an abuse of weakness, a mistake, a fraud or that the professional did not comply with its contractual "duty to advise" (for example: a bank which did not undertake the necessary basic investigation and granted a loan disproportionate to the consumer's financial resources was not allowed to recover the total amount of the loan⁷).

39. Furthermore, the concept of suitability may be found in a variety of situations involving financial services and investment businesses. In common law countries (Canada, except Quebec; the United Kingdom; the United States), special rules pertain to the "know your customer" aspect of suitability, while the common law concepts of duress, undue influence and unconscionability are also closely related.

40. An example of the latter in Australia is the case cited below of Commercial Bank of Australia Limited v Amadio [1983] (HCA 14; (1983) 151 CLR 447) which concerned an elderly couple of foreign origin with language disadvantages.

41. In the United Kingdom a specific legislative expression of this rule was also identified in the financial services area. The Financial Services and Markets Act, s5(2)(c), requires consideration of consumers' need for advice and precise information. 2.1.1 item 9 of the Principles for Businesses (PRIN),

⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993.

⁷ Cass. Civ 1ère 27.06.1995 and 12.07.2005.

which is a subordinate norm to the same Act, explicitly sets out the suitability principle: “A firm should take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.”

42. In the United States, the National Association of Securities Dealers’ (NASD) Conduct Rule 2310 is known as the suitability rule and requires member brokerage firms to recommend a securities transaction to a customer only if the recommendation is suitable in light of the customer’s experience, financial situation and needs. NYSE Rule 405(1) provides that: every member organisation is required to: “Use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organisation and every person holding power of attorney over any account accepted or carried by such organisation.”

43. In Canada, in the context of “know your customer”, no rules in generally applicable consumer law apply particular requirements based on the consumer’s financial or other circumstances. However, acting with knowledge of an inability to pay could be considered unconscionable (*i.e.* in determining that a practice is unconscionable, a court may consider that the seller knew that there was no reasonable probability that the consumer would pay his or her obligation in full [Ontario CPA Section 15(2)(d); Alberta Fair Trading Act, s.6(3)(b), etc.]). In order to examine suitability rules under Canadian law, the concepts of duress, undue influence and unconscionability need to be considered. For example, there are grounds for the rescission of a contract specifically preserved in the Sale of Goods Acts of each province (*i.e.* in Alberta, R.S.A. 2000, c.S-2, s.58) and in the unfair business practices legislation of each province (*i.e.* in Alberta, the Fair Trading Act, R.S.A.2000 c.F-1.05 ss.5-19, 186, 187 and the Unconscionable Transactions Act, R.S.A.2000, c.U-2), on the general principle of exploitation of one of the contracting parties by the other. The Civil Code of Quebec, Canada, addresses this issue under the concepts of fear and lesion (Civil Code of Quebec, C.C.Q Art. 1402-1407), good faith (Arts. 6,7 and 1375), the abusive exercise of any right (Art. 7), and adherence to public order (Arts. 8 and 9.). Similar provisions are also contained in the Quebec Consumer Protection Act (Arts. 8 and 9).

44. In a civil law jurisdiction such as Germany, the suitability rule is understood to involve an obligation to give advice or provide adequate information or explanation as to the investment product that is most appropriate for an investor. Failure to do so may give rise to a claim for compensation for damages under the private law as an action in tort. This more or less corresponds to the distinction between "the suitability rule in a wide sense" and "the suitability rule in a narrow sense" as discussed by Japan.

45. There are debates within countries as to whether or not to recognise an obligation to collect information about customers. In the United States, when the suitability rule is discussed in the context of the NASD or NYSE as the notion of "know your customer", mention is made of an obligation to gather information. Under the Korean Regulation on Supervision of Securities Business, a "know your customer" rule is merely an obligation to make efforts, and in other countries this point is not addressed (France, in particular; Germany is somewhere in between). In Spain, the *Comisión Nacional del Mercado de Valores* recommends that a risk profile of each client should be made before offering him or her any investment product.

46. A particular area of concern is credit contracts. Financial institutions have had to pay more attention to the needs and vulnerabilities of certain customers (*e.g.* wives securing their husbands’ business debts) under expanded doctrines of undue influence (United Kingdom), unconscionability (United States) or both (Australia and New Zealand). However, some jurisdictions have been more active than others (*e.g.* New Zealand and jurisdictions within Australia) in developing such notions to the extent of enacting legislation generally requiring credit providers to assess borrowers’ ability to repay. In Australia, under the Fair Trading Act 1992 (ACT) s.28A, for example, a supplier of a continuing credit contract (credit card, etc.) who has not undertaken a prior “satisfactory assessment process” commits an offence (s.41) and is

liable for other remedies such as damages (s.46). It is noteworthy that US common law prefers to apply the principle of unconscionability rather than that of undue influence.

47. In Norway, the Marketing Control Act (MCA) is founded on the concepts of what is “unfair in relation to consumers” and “good marketing practice”. Section 3 of this act sets out a specific provision against the giving of insufficient information, and one of the relevant factors in the assessment of what is sufficient is lack of experience or knowledge of the consumer. The MCA does not contain any specific provisions relating to suitability rules. However, it has, in raising issues of “fairness” and “good marketing practice”, provided certain legislative tools that can be used to protect vulnerable consumers. It should be noted in this context that “Guidelines on the Consumer Ombudsman’s Practice; Marketing in Relation to Children and Young People” have been published for the specific purpose of providing general information on practices that may involve the application of the MCA. In accordance with the long-term practice of the Market Council (MC) and the Consumer Ombudsman (CO), these guidelines contain strict requirements regarding advertisements directed at children and young people. Similarly in Denmark, despite the lack of legislation regarding suitability rules, the guidelines on “Children, Young People and Marketing Practices (2002)” deal with this principle in relation to the young.

48. In Poland there is no specific protection on the grounds of suitability and all consumers, including minors, have the same rights. In Iceland some measures relating to children were identified; while they do not recognise the concept of suitability in those terms, they offer increased protection for this class of consumer/end-user (Regulation Nos. 408/1994 and 293/1995; Competition Law No. 8/1993, Art. 22).

49. Some measure of protection can also be observed in Mexico. The Federal Consumer Protection Law of Mexico (FCPL) has a general provision that protects against deceptive or abusive advertising, coercive or unfair trade methods, and abusive or improper practices in the provision of products and services (Art. 1). This does not constitute a suitability rule. On the other hand, paragraph VII of Article 76 bis of the FCPL provides that the supplier must abstain from using advertising strategies that do not provide consumers with clear and sufficient information, especially in marketing practices addressed to vulnerable populations, such as children, the elderly and the sick. While there is no element of “knowing” your customer, there is nevertheless a generalised protection against unsuitability for these potentially vulnerable consumers.

50. On this topic, the result of members’ responses to the hypothetical cases indicates that in a few countries general law principles may require taking some characteristics of consumers into account. In other cases, only a more specific regulation of certain professionals can provide solutions (*e.g.* “cooling-off” periods).

51. In view of the above, it is desirable to address the following points:

- i) How to define the suitability rule.
- ii) How to set the frame of situations in which this rule is needed (targeted industries, products and services). Whether to restrict it to financial services. If so, how to specify financial services. Whether to develop it as a principle applicable to consumer business transactions in general.
- iii) Whether to characterise it as a private law principle or merely as a regulatory rule.
- iv) What the effect is if one recognises its nature as a private law rule. Whether or not to permit the nullification or cancellation of a contract that is in violation of the suitability rule. Or to interpret an act in violation of the suitability rule as tort and link it to liability for damages.

- v) Even if one recognises the suitability rule on a private law basis, it is desirable to consider whether to develop the rule on the basis of the systems or norms of existing general private law rules, or to establish special provisions.

52. The survey results do not yield a decisive model on the basis of which to resolve these issues. There is still much to be considered, and it will take some time before a general suitability rule can be introduced into consumer contract law systems.

Members' responses to the hypothetical case studies

<p>Case 6</p> <p>A door-to-door telephone company seller sold a telephone featuring highly advanced functions to an 80 year-old man under a seven-year lease contract for the price of JPY 1 million (approximately EUR 6 900, USD 8 800). The elderly man, who lives in a small house on a pension, does not need a telephone with complex functions, nor can he pay the fee for the lease. His family wants to cancel the lease contract. What is the effect on a contract of a seller using these methods or undue influence to induce a consumer to enter into the contract?</p>
<p>Australia</p> <p>Australian law, both common law and under the TPA, prohibits businesses from engaging in unconscionable conduct in their dealings with consumers (s.51AB). Whether particular conduct is unconscionable will depend on an assessment of all the circumstances. However, exerting undue pressure or using unfair tactics against a consumer may be indicators that unconscionable conduct has occurred. The TPA also prohibits businesses from using undue harassment or coercion in connection with the supply or possible supply of goods or services (s.60). There are a number of remedies available to the court if the TPA or common law is breached including injunctions and termination of contract.</p>
<p>Czech Republic</p> <p>Concerning this case, there is no possibility of cancelling the contract unless it can be proved that the contract was signed under pressure in strikingly disadvantageous conditions (§49 of the Civil Code). In such a case, the consumer has a right to withdraw from a contract concluded in this fashion.</p>
<p>Finland</p> <p>It seems that in the above case the consumer's distress, lack of understanding or imprudence was taken advantage of by the seller. If the seller at the same time acquired a benefit, which is disproportionate to that which he has given, the contract is not binding on the consumer as stated in s.31 of the Contracts Act.</p>
<p>Japan</p> <p>Pursuant to the Act on Specified Commercial Transactions, Article 9, the consumer has a "cooling-off period" and may rescind a contract within eight days after the receipt of the legal contract document: (1) related to the goods, rights, or services designated in the Ordinance of the Act; and (2) concluded at a place other than the seller's place of business. Article 7 of the same Act and Article 7 of the Regulations under the Act also prohibit the following acts: <i>i</i>) taking advantage of the impaired judgement of an elderly or other person and having such a person conclude a sales contract or a service contract pertaining to door-to-door sales; and <i>ii</i>) the act of conducting a solicitation that is found to be inappropriate in light of the state of the customer's knowledge, experience, and assets. [This case falls under the said articles.] The general provisions in the Civil Code regarding fraud may permit the consumer to withdraw from the contract if the seller's conduct and representations constitute fraud. The consumer may also be able to withdraw from the contract if the seller used methods violating good morals in procuring the contract.</p>

Mexico

Under the Mexican legal system, there must be proof of bad faith, lying, fraud, malicious failure or deception of the consumer by the seller. It is an unfair business practice to use such tactics in executing a consumer contract. As to elderly persons, it has to be taken into account that the consumer is elderly and the seller may have executed significant pressure. Additionally, the seller should engage in due diligence to ensure that the contracting consumer has the proper economic solvency to cover the payments required by a lease contract.

Norway

If the business practice in the example above forms part of the seller's general commercial practice, the Consumer Ombudsman (CO) can claim the seller to stop the marketing practice, according to Section 1 of the Marketing Control Act [Act 16 June 1972 no. 47 (MCA)]. Section 3 sets out a specific provision against insufficient information, and one of the relevant factors is the lack of experience or knowledge of consumers. The individual consumer cannot obtain a remedy under this provision. The seller can be fined if he/she does not comply with an injunction issued by the Marketing Council. The Act relating to conclusion of agreements etc. (Act 31 May 1918 no. 4) does not apply only to consumers but may still be applicable in this case and in Case 8 below. According to Section 33, a declaration of will that under other circumstances would be considered valid shall not be binding for the person. According to Section 36, an agreement can be set aside if it would be unreasonable or conflict with generally accepted business practice. Undue pressure against elderly people is a relevant factor in the assessment under both provisions.

Slovak Republic

Slovak regulations do not contain a provision on the prohibition of unsolicited offers to consumers. However, in the case of a door-to-door contract being concluded, the consumer has the right to withdraw from the contract within seven working days of the day of acceptance. The seller is obliged to take back the goods and return the sum paid for the goods to the consumer no later than 15 days following the day of withdrawal.

Sweden

This issue deals with telephone sales. In addition to the regulations in the Consumer Sales Act and the Contracts Act, the Distance and Doorstep Sales Act (2005:59) applies to sales of this kind. Under Chapter 2, Section 9 of the last-mentioned Act, a consumer has the right to withdraw from a distance contract by submitting or sending notice thereof to the undertaking within 14 days of the day the goods were received without particular reason.

Switzerland

The contract, if it applies to a leasing or sale by instalments involving the payment of interest, is subject to the Law on Consumer Credit (LCC). It must be made in writing and contain the necessary indications (Arts. 9-11 LCC) under penalty of nullity (Art. 15 LCC). It can be revoked within seven days of reception of the written copy of the contract (Article 16 LCC). The company making the telephone call must check the capacity to contract for credit in the case of elderly persons (Art. 28 LCC).

United States

In most states, consumers may cancel any home solicitation sale until midnight of the third business day after the date on which the buyer signs an agreement with the seller. Therefore, the sales contract may be voidable within three days simply because the contract was executed at the home of the consumer. Even if three days have elapsed, the consumer may claim that he does not have to pay for the machine because he was under duress. If the seller employed undue influence on the consumer, the age of the consumer may be a factor if it rendered the consumer particularly susceptible to external pressures. However, age alone is not sufficient to show mental weakness and a consequent unequal bargaining power. Considering the given scenario, the advanced age of the consumer, coupled with any domination or unfair tactics employed by the seller may support a claim of undue influence and the voidability of the contract.

European Commission

The Doorstep Selling Directive would be applicable to this case. This directive provides any consumer with a right to withdraw from a contract concluded at a doorstep within a minimum of seven days from the moment the contract was concluded without giving a reason. The purpose of the right of withdrawal is to protect consumers against making spur-of-the-moment purchases when approached by persuasive salesmen on their doorstep. There is no requirement in the directive pertaining to the use of undue influence or any other unfair methods. The effects on contracts of such behaviour on the part of the seller are exclusively governed by the contract laws of the Member States.

Case 7

A seller induced a consumer receiving welfare benefits to conclude a time-sharing contract for a luxury resort. Unable to make the requested payments under the contract, the consumer would like to cancel it. In response, the seller informs the consumer that he will be subject to a penalty. What is the effect on a contract of the seller using these methods or undue influence to induce a consumer to enter into the contract?

Australia

See response to Case 6.

Czech Republic

Regarding timeshare contracts, consumers have a right to withdraw from the contract within 15 days without any sanction (§63 of the Civil Code). The only possibility to cancel the contract later would arise if it could be proved that the contract had been signed under pressure under strikingly disadvantageous conditions (§49 of the Civil Code).

Finland

See Case 6.

Japan

The consumer may retract from/cancel the contract if the seller sold the timeshare contract for a luxury resort using methods which amounted to fraud as defined by the Civil Law. He/she may cancel the contract if the seller sold said contract using methods which violate morals as defined in the Civil Law.

Mexico

In this case, the consumer has the right to choose. When consumers choose a product or a service, no one should apply pressure or set down conditions when selling to them. If a seller uses deceptive marketing practices to induce a consumer to acquire the product, and this results in his/her assuming obligations under the contract, the FCPL applies. In this case, the consumer would not be penalised when he/she cancels the contract unless that particular penalty was mentioned at the beginning of the contract.

Norway

The seller would have a duty to inform the consumer about costs and all necessary issues of which the consumer may expect to be informed, cf. the Timeshare Act (Act 13 June 1997 No. 37). Information about the duty to pay a penalty for cancelling the contract would be covered by this provision. However, infringement of these rules does not give the consumer a right to cancel the contract.

Slovak Republic

Consumers have a right to withdraw from the contract within ten days without any sanction. The only possibility to cancel the contract later would be to prove that the contract had been signed under pressure under strikingly disadvantageous conditions. The consumer also has the right to refer the case to a court.

<p>Sweden Under Swedish law, a consumer has a right of withdrawal from a timeshare contract within ten days, without obligation to give any reasons. After the ten-day period, a consumer has an extended right of withdrawal of three months if certain fundamental pieces of information were missing from the contract.</p>
<p>Switzerland Under Swiss law, the consumer does not have right to cancel a contract relating to the use of a building on a timeshare basis. The fact that the consumer is not able to pay the price has no effect on the contract. A contract may provide for the payment of a penalty in the event of cancellation (see Art. 158, Al. 3 and 160, Al. 3 CO).</p>
<p>United States Some states have laws dictating timeshare contracts. In Texas, for example, a purchaser may cancel a purchase contract before the sixth day after the conclusion of the contract (Texas Property Code §221.041). In Florida, a purchaser may cancel the executed contract within ten calendar days (Florida Statutes §721.10). The outcome of the above scenario may depend on how many days have passed since the conclusion of the contract.</p>
<p>European Commission This situation concerns a timeshare transaction, which is regulated at European level by the Timeshare Directive. Under this directive the consumer may withdraw from a contract within minimum of ten days without giving a reason. If the professional fails to provide the consumer with information on the consumer's right of withdrawal, this cooling-off period may be extended to up to three months and ten days. In addition, the Member States may provide for nullity of the contract. The effects on the contract of undue influence or unfair sales methods are exclusively governed by national law.</p>

<p>Case 8 After being induced by a door-to-door sales remodelling agent to enter into an expensive contract to remodel his house, a 70 year-old man lost all the money he had saved for his old age. What is the effect on a contract of a seller using these methods or undue influence to induce a consumer to enter into the contract?</p>
<p>Australia See response to Case 6.</p>
<p>Finland See Case 6.</p>
<p>Japan See Case 6 regarding general provisions.</p>
<p>Mexico See Case 6.</p>
<p>Norway See Case 6.</p>
<p>Sweden This issue here probably deals with door-to-door selling of construction services. If the matter does not concern the construction of a building but rather services relating to the repair, renovation or extension of an existing building, the sale is probably covered by the Distance and Doorstep Sales Act. Under Chapter 4, Section 5 of the Act, a consumer has the right to withdraw from a sales contract by submitting or sending notice thereof to the undertaking within 14 days of the day the contract was entered into, without obligation to give any specific reasons. The Act also obliges the undertaking to inform the consumer of the right of withdrawal prior to signing the contract. The undertaking must also perform its part of the contract (complete the service) within a reasonable period of time.</p>

Switzerland

A contract resulting from a door-to-door sale can be cancelled within seven days. The fact that the man is old and that it commits all of his resources does not have any influence on the contract, which is validly concluded according to Article 1 CO and must be carried out.

United States

Also see discussion on Case 6 and 7 above.

Regarding remodelling specifically, some states, such as Indiana and Illinois, have enacted criminal statutes prohibiting home improvement fraud against elderly persons [Gray v. State, 790 N.E.2d 174 (2003); People v. Thompson, 275 Ill. App. 3d 725 (1995)].

European Commission

The Doorstep Selling Directive mentioned under Case 6 also applies to the sale of services and thus to the situation described in the example. See Case 6 for more details.

Rules on unsolicited offers and pressure sales tactics*General trends*

53. In general, unsolicited offers are permitted under the principle of freedom of business activities. The fact that an offer is unsolicited does not in itself make it illegal.

54. However, unsolicited offers may be restricted if unfair trade practices or impermissible acts of interference are involved, for example if a supplier of goods or services pressures consumers to bear an unfair burden through the use of one of the new media.

55. Similarly, while in themselves door-to-door sales are also not considered illegal, except in Denmark which requires prior consumer consent for such approaches, consumers may nevertheless have a right to rescind transactions that result from unsolicited offers. This is because of the considerable danger of unfair influence in the process of a consumer's decision. If a case is judged to be illegal and prohibited, consumer agencies or other specific organisations may also exercise their right to make a claim for an injunction.⁸

56. For example, in member states of the European Union, a consumer has a right of revocation for door-to-door sales (Arts. 4 and 5 of Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises), and the trader must inform the consumer of this right (otherwise the revocation period does not begin). Door-to-door sales also occur when the consumer is induced to conclude a contract subsequent to an unexpected "surprise" sales pitch when he/she is inside a means of transport, e.g. a motorcar, or in open public space, e.g. parks. Furthermore, besides competitors, consumer agencies or other specific organisations may sue for an injunction calling for the trader to henceforth abstain from unfair practices (Directive 98/27/EC on injunctions for the protection of consumers' interest).

57. Some countries restrict unsolicited offers by enacting specific legislation. Especially in the EU, these restrictions are introduced through directives on consumer protection (the Unfair Commercial

⁸ Furthermore, besides competitors, consumer agencies or other specific organisations may sue for an injunction calling for the trader to abstain henceforth from unfair practices, as in Germany (§8 UWG, §2 UKlaG).

Practices Directive).⁹ However, countries such as Germany adopt measures not only in special statutory laws but also in the Civil Code, in view of the importance they attach to the restriction of such acts.¹⁰

58. Furthermore, in any member country where the issue of torts is involved in unsolicited offer cases, consumers who suffer a loss have the right to claim damages and/or an injunction, as laid down by the relevant provisions of the general private law.

Specific protection

59. As mentioned above, door-to-door sales and inertia selling (negative options) may be seen as involving unfair trade practices or entailing a considerable risk of influencing a consumer's freedom of choice (*i.e.* self-determination in the process of transactions).

60. Contrary to expectations prior to the survey, the survey showed that as a general private law rule, few countries address the prohibition of certain types of unsolicited offer that may, in cases of breach, lead directly to rescission. Rather, member countries seem more often to address the issue in the context of business regulations regarding solicitations by specific media, in particular, telephone, postal mail, facsimile and e-mail. For example, Belgium, Canada, Denmark, France, Germany, Iceland, Italy, Japan, the Netherlands, Norway, Spain, and the United States have regulations relating to these media, and many deal with the issue through a right to rescind within a cooling-off period.

61. In Europe, the Directive on the protection of consumers in respect of distance contracts¹¹ provides a system for regulating the issue through rules pertaining to various mediums. The EC directives have led to legislation in EU member states. In the United Kingdom, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) were enacted. They regulate unsolicited communications by means of facsimile, telephone and e-mail facilities, and specifically refer to their EC origin in the title.

62. In France, solicitation by automatic calling machine, facsimile, or e-mail without the consumer's prior consent is prohibited in principle (Consumer Code, Art. L. 121-20-5).

63. In Poland, the unsolicited sending of commercial information by electronic communication is regulated, and a breach of the rules may attract penal sanctions (Act on providing services by electronic means, Arts. 10, 24). Iceland has a specific set of provisions for unsolicited offers and distance selling and a combined opt-out/opt-in procedure for unsolicited e-mails: consumers may opt out by entering their

⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC and 2002/65 of the European Parliament and of the Council and Regulation (EC) N° 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive). As from 12 December 2007, the directive will be applicable in all the member states. In a horizontal fashion, the directive bans unfair commercial practices, it regulates in more detail two key categories of unfair practices (misleading and aggressive) and it provides for a "blacklist" of practices which will be banned in all member states.

¹⁰ In Germany, a consumer has the right to revoke a door-to-door sale (§ 312 BGB), and the trader must inform him or her about this right (otherwise the revocation period does not begin). Door-to-door sales include those where the consumer is induced to conclude a contract subsequent to an unexpected "surprise" sales pitch which is made inside a means of transport, or at an open public space.

¹¹ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

name on a central register, and all others will be assumed to have opted out if they do not opt in after the first e-mail contact (Article 14, Act on Door-to-door Sales and Distance Contracts – No. 6/2000).

64. In Canada, the federal Competition Act (R.S.C. 1985 c. C-34, Art. 52) deals with unsolicited offers, or direct sales in general, and contains specific provisions with regard to door-to-door sales and telemarketing sales (Art. 52.1). For each province, the Consumer Protection Act (*e.g.* in Quebec, Art. 58), Unfair Business Practices Act or Direct Sellers Act and Regulations require certain information to be included in a direct sales contract for it to be enforceable, and provide a ten-day “cooling-off” period during which a direct sales contract can be rescinded, and protect consumers from liability for debt incurred in connection with unsolicited goods and services. Deceptive telemarketing practices are prohibited and can be reported to the authorities.

65. In Mexico, unsolicited call issues are covered under the FCPL which contains a general provision against coercive or unfair trade practices and abusive or improper practices in the provision of products and services (Art. 1) and provides sanctions for violations.

66. In the United States, rules addressing unsolicited offers also regulate approaches by specific media such as telephone, postal mail, facsimile or e-mail. The American Congress enacted the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act to curb spam. Pursuant to the Act, the Federal Communications Commission (FCC) adopted rules that prohibit sending unwanted commercial e-mail messages to wireless devices without prior permission. The Telemarketing Sales Act prohibits deceptive telemarketing acts or practices.

67. Likewise, Australia enacted the Spam Act 2003 (Cth), which in turn influenced the anti-spam legislation that has been debated in the New Zealand Parliament since mid-2005.

68. The specific rules used by many member countries to deal with the issue are classified as laws (or regulations) regulating specific industries and businesses rather than as general private law. However, this does not mean that the problem of unsolicited offers is not being dealt with by way of general private law rules. Examples of the application of broader private law principles can be seen in the way that the problem may be dealt with either as a problem of responsibility on the grounds of fault in contract making (*culpa in contrahendo*) (*e.g.* Germany), assessed from the viewpoint of a violation of public order (*e.g.* France), or treated as one aspect of so-called "abuse of the circumstances" (*e.g.* Netherlands). In these cases, the effect of the contract can be denied, or it can be associated with a claim for an injunction to prohibit an act of solicitation.

69. In Australia, consumers are protected from unsolicited e-mail by the Spam Act 2001 and can include their names on a “do not call” register which prohibits corporations from calling consumers who have registered. In addition, there are laws regulating specific industries and businesses which may apply, such as those set out in the Corporations Act 2001 which prohibit the selling of financial products after unsolicited visits or as a result of unsolicited phone calls not made during specified times of the day/week, or the prohibition against harassment and coercion (Trade Practices Act 1974, Part IVA, s.60). There is also the potential applicability of the more general “unconscionable conduct” provisions of the Trade Practices Act (TPA 1974, s.51AA and s.51AB). In addition, common law intervenes in appropriate cases.¹²

¹² See *Commercial Bank of Australia Limited v. Amadio* [1983] HCA 14; (1983) 151 CLR 447, decided with reference to the equitable principle of unconscionability.

70. In the Netherlands, in addition to the general protection in the Civil Code (Art. 44, Vol. 3) mentioned above, specific business regulations have been introduced in certain areas.¹³

71. In the Slovak Republic, however, there appears to be very little identifiable protection from unsolicited offers for the consumer, unless these are made in person and away from the seller's business premises (*i.e.* unsolicited calls). In the Czech Republic, an undertaking is prohibited from sending commercial communications without consumers' prior consent and leads to penal sanctions in case of violation.¹⁴

72. While there would be great significance in establishing a private law rule on the prohibition of unsolicited offers with injunction in cases of breach, it is also necessary to allow freedom of business activities on the part of business operators. The regulation of unsolicited offers may be effectively coordinated with the right of withdrawal system in use in all member countries of the European Union.

73. In addition to the issues discussed above, other issues concern certain types of unsolicited offers such as "door-to-door sale (unsolicited visit without prior consent)" and "inertia selling (negative option)" which involves suppliers sending goods that have not been ordered by the consumer beforehand. These unsolicited offers are basically permitted in most member countries, although certain prohibitions may apply. For example, transactions resulting from such approaches may be subject to cooling-off periods or denial of the supplier's property right to the goods so that he/she cannot claim restitution, resulting in the consumer's acquisition. New Zealand, for example, has specific legislation on door-to-door sales and unsolicited goods and services, because general private law principles have proven inadequate to address such problems. Also, in Finland, certain principles govern door-to-door sales, especially those concerning elderly people. Other examples are Belgium and the province of Prince Edward Island in Canada which stipulate a clear prohibition against the sending of unsolicited goods without obtaining the consumer's prior consent.¹⁵

Members' responses to the hypothetical case studies

Case 9

A consumer was stopped by a seller on the street and was given, during a couple of hours in a cafeteria (not in the seller's office), detailed information on certain goods. Although the consumer was not interested in purchasing the goods, he nonetheless entered into a contract after the seller told him he was obliged to do so because of the long explanation he had been given.

Australia

The TPA, and common law, prohibits businesses from making representations that are misleading or deceptive or likely to mislead or deceive. This would include a misrepresentation as to the legal obligations of an individual. Consequently, a statement by the seller that a consumer was "required" to enter into a contract is likely to be in breach of the TPA. The consumer would still be required to show a link between the seller's misrepresentation and any associated loss or damage in order to obtain any compensatory remedies.

¹³ See amended Telecommunication Act which came into force on 19 May, 2004, in response to an EC directive. Transmission of e-mails, fax and SMS messages to private persons as individuals without any request and prior consent is prohibited.

¹⁴ Act No 480/2004 Coll., on Certain Services of Information Society, Sections 7 & 11.

¹⁵ In Belgium, Act of 14 July 1991, Commercial Practices and Consumer Information and Protection, Chapter 6, Section 8, Forcible sale.

Canada

Being entered into away from the supplier's permanent place of business (other than at a fairground, public auction or similar location), this contract would be treated identically to a door-to-door sale under the CPA 2002. The consumer would thus have the right to a ten-day cooling-off period. This would also be the case in several other provinces. In addition, the particular representation that the consumer "was obliged to enter into the contract" would likely be considered a misrepresentation and thus an unfair practice under the CPA 2002. This would be the case in most provinces under UDAP legislation. Thus the seller would have committed an offence and the consumer would obtain the remedy of rescission.

Czech Republic

Unsolicited offers are regulated by Act No. 480/2004 Coll., on Certain Services of Information Society in addition to the Civil Code. The former provides that the undertaking has to receive the consumer's prior assent in order to send commercial communication. In case of breach of the law, a fine is imposed. In this case, provisions on door-to-door sales would apply. Currently, based on §57 of the Civil Code, the consumer can withdraw from the contract within (basically) 14 days. The only possibility to cancel the contract later would be to prove that the contract had been signed under pressure under strikingly disadvantageous conditions (§49 of the Civil Code).

Japan

Under Article 4.3 of the Consumer Contract Act, a seller may not attempt to prohibit a consumer from leaving the place of solicitation once the consumer has clearly expressed his desire to leave and to not enter into a contract, and the consumer may withdraw from a contract obtained under such conditions. This case comes under Article 4.3, item 2 of the Act and the consumer can void the contract. Also, according to Article 9 of the Act on Specified Commercial Transactions, a consumer can rescind a contract within eight days after the receipt of the legal documents of the contract ("Cooling-off Rule"), when he/she concludes a contract: *i*) related to the goods, rights, or services designated in the Ordinance of the Act; *ii*) at a place other than the seller's place of business. Articles 3 and 6 of the same Act also prohibit the following: *i*) the act of concealing the purpose of soliciting a contract; *ii*) the act of intimidating a consumer in order to make him/her conclude a contract; *iii*) the act of soliciting a sales contract, etc., from a consumer who has been stopped by the seller at a place other than his/her place of business without being told of the purpose of soliciting a contract, at a place other than a publicly accessible place (*e.g.* a place of business, a hotel room, a conference room, etc.)

Sweden

The Distance and Doorstep Sale Act (2005:59), Chapter 1 Section 2, second sentence, introduces protections under the "excursion rule" for certain kinds of meetings away from the trader's business premises. Whether this rule can be considered applicable to sales in the given example may be somewhat uncertain, owing in part to the fact that this case seems to deal with a sales situation that is unplanned and unprepared as regards the individual consumer. If the sale is covered by the regulation, the consumer can exercise the right to withdraw from the contract within 14 days without having to provide a reason (Chapter 4, Section 5). In the example, the consumer can also claim that in point of fact a contract had not been entered into since he/she has not provided a declaration of intent to enter the contract (acceptance has never been given), or at any rate the contract must be considered to be invalid under Section 30, first paragraph (deceit) or Section 33 (good faith) of the Contract Act. Furthermore, the consumer can also claim that the contract should be modified or dismissed, in its entirety or in part, under Section 36 of the Contracts Act.

United States

Whether or not the contract was solicited by the consumer does not affect the enforceability of the contract. However, the unsolicited nature of the offer may affect the equality of the parties to the contract. If a consumer was inundated and overpowered by the offer, an argument may be made for unconscionability of the contract, and consequent voidability of the contract. Therefore, the outcome depends on all of the circumstances surrounding the execution of the contract. There is not enough information available in the hypothetical case to ascertain whether the parties were equal.

European Commission

The Doorstep Selling Directive applies to contracts negotiated “during an excursion organised by the trader away from his business premises” or during visits by the trader to the consumer’s home or place of work. Whether the situation described in the example would fall under the scope of the directive would have to be determined by case law. Some guidance may be found in the ECJ case Travel-Vac. However, the Commission is not aware of any case law relating to the precise situation described in the example, at EU or national level. In addition, Member States remain free to extend the scope of their transposition laws to other situations. If applicable, the directive provides consumers with a right of withdrawal within a minimum of seven days.

Case10

A consumer was led into a seller’s office after being told by the seller that he only wanted to tell him about a profitable business prospect. The seller then prevented him from leaving the place by starting to give explanations on other goods. The consumer finally concluded a contract with the seller.

Australia

The TPA specifically prohibits corporations from using undue harassment or coercion in connection with the supply of goods or services. Restraining a person from leaving the premises until they have entered into a contract, in addition to potentially being unconscionable conduct as discussed earlier, may also be in breach of the prohibition on undue harassment or coercion.

Canada

The consumer was lured by a representation that was deceptive as to the purpose of the communication. This is an example of a misrepresentation which most UDAP statutes specifically note as prohibited (see CPA 2002 s.14(2)15). This would be the case in most provinces. Thus the seller would have committed an offence and the consumer would have the remedy of rescission. This assumes the ultimate contract concluded is a consumer transaction and not for a business purpose. If the representation and final agreement were all for business purposes, the CPA 2002 would not apply (nor would other provinces’ consumer laws). The issue of possibly broadening the scope of consumer law to the benefit of smaller enterprises was explored in public consultation in 2000 and the consensus of stakeholders, including the small business community, was that the scope of the law should not be extended.

Czech Republic

See Case 9. In such a case provisions on door-to-door sales would not be applicable and the consumer could only claim that the contract had been signed under pressure under strikingly disadvantageous conditions (§49 of the Civil Code).

Japan

See Case 9. Also the seller’s act may fall under Article 9 of the Act on Specified Commercial Transactions in relation to a consumer who concludes a contract at a place of business; the consumer may also have this right if he/she is taken to that place by the seller, and stopped at a place other than the place of business. Articles 3 and 6 of the same Act also prohibit the following acts: *i)* the act of concealing the purpose of soliciting a contract; *ii)* the act of intimidating a consumer in order to make him/her conclude a contract; *iii)* the act of soliciting a sales contract, etc., from a consumer who has been stopped by the seller at a place other than his/her place of business without being told the purpose of soliciting the contract, at a place other than a publicly accessible place (*e.g.* a place of business, a room of a hotel, a conference room, etc.).

Sweden

See Case 9. Instead of referring to Section 30 (deceit) of the Contracts Act, the reference should be to Section 29.

Switzerland If the consumer is approached by the professional salesman at the seller's office, at work or in a public place, he or she will be able to revoke the contract in accordance with Article 40a ss CO. It is not necessary that all of the contractual process should be completed at the commercial buildings of the supplier. The case can also be examined in the context of Article 3, let H, LCD.

United States

The outcome of this scenario depends on how the seller prevented the consumer from leaving. If the prevention was only in the form of explanations of other goods, that is probably not so unfair as to warrant an examination of the unconscionability of the contract. If the seller employed force in such a way as to destroy the consumer's power to refuse to comply with the unjust demands of the seller, then duress may be an issue.

European Commission

Existing EU legislation on consumer contracts does not apply to this case. However, as from 12 December 2007 the Unfair Commercial Practices Directive (marketing law), could apply to this case (see part II of this report for more information).

Case 11

A remodelling business agent visited the house of a 65 year-old man with a view to convincing the elderly man to conclude a contract despite a notice posted on the front door stating "No Door-to-door Sales!" To what extent would the outcome of this case be different if, having received a telephone call from the elderly man, the agent visited his house and induced him to undertake a more expensive remodelling job than he wanted?

Australia

A particular factor the court will consider to determine whether conduct is unconscionable is the relative strength of the bargaining positions of each party. A contributing factor to the "strength" of a bargaining position is the relative age and experience of each party [see also *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447]. If the agent had been specifically invited onto the premises for the purposes of making a sales proposition, it is likely that it would be harder to satisfy the court that unconscionable conduct, or unfair coercion, had occurred.

Canada

A sign indicating "no door-to-door sales" has no effect on the validity of a contract. Both scenarios describe transactions that are "door-to-door sales" under CPA 2002 (some provinces may treat contracts resulting from an invitation to the home differently). The ten-day cancellation remedy described earlier would apply.

Czech Republic

In the first situation described, provisions on door-to-door sales would be applicable (§57 of the Civil Code, see above). Further, the consumer could claim that the contract had been signed under pressure under strikingly disadvantageous conditions (§49 of the Civil Code) and use his right to withdraw. In the second situation, provisions on door-to-door sales would not be applicable.

Japan

Generally speaking, a sign at a private residence prohibiting door-to-door solicitation, etc., does not affect a contract entered into at such a place; the conduct of the door-to-door seller must violate the Consumer Contract Act or some other law. If the seller used methods which violate the Consumer Contract Act, the consumer may void the contract.

Sweden

If the seller took the initiative to visit to the older man's home, the Distance and Doorstep Sales Act and its rules on the duty to provide information and the right of withdrawal should be applicable (see Case 9). If, however, the home visit takes place at the initiative and express request of the consumer and relates to goods or a service which are included in the consumer's request (for the home visit) or is directly associated with this particular goods or services, the rules for sales in the Distance and Doorstep Sales Act do not apply (See Chapter 1, Section 2 and Chapter 4, Section 1, second paragraph, point four of the Act). On the other hand, under contract law, it is possible that the same objections could apply as in Cases 9 and 10.

Switzerland

Unless he asked expressly for the negotiation, the elderly man can revoke the contract within seven days, according to Article 40a of CO. The poster clearly indicates that the old man did not request the negotiation, so the seven-day withdrawal right will apply. In the case of his having made a phone call to request the visit, however, it will not. The fact that the salesman did not take into account the poster posted by the elderly man will also enter into the assessment of whether the behaviour is unfair within the meaning of Art. 3, let H, LCD. However, it will not necessarily be regarded as such. The fact that the salesman leads the elderly man to conclude a more expensive contract is not relevant under Swiss law.

United States

As stated previously, in the United States, home solicitation sales such as this one may fall under a particular state law regulating or prohibiting such sales. If the older man initiated contact with the agent, home solicitation sales may not apply. If, after the home visit, the older man chose a more expensive remodelling job, the validity of that contract would hinge on what tactics (fair, unequal, fraudulent, forceful, or threatening) were employed by the agent. In some states, if the remodelling contract is found to be fraudulent, the seller could be found guilty of a felony or misdemeanour.

European Commission

The Doorstep Selling Directive applies in the same manner as in Case 6. If the consumer has requested a visit from the trader, the directive usually does not apply. There is an exception to this rule in a situation in which the trader offers other than goods those requested by the consumer.

[II] Administrative and penal law rules¹⁶***Relationship with private law rules***

74. Under all four topics discussed above, consumer protection is regulated by a combination of: general private laws which prioritise consumer protection or an aspect such as the sale of goods, administrative laws regulating specific industries and businesses, and fair trading or competition laws.

75. Competition laws tend to have been used from the viewpoint of maintaining and promoting free and fair business transactions, as well as the security and promotion of a free economic market, in situations where private law remedies are still immature, unclear, or not dealt with at all.¹⁷

¹⁶ In relation to administrative or penal rules, the descriptions are based on limited responses or comments on these topics from the member countries. However the limited material presented should not be taken as necessarily indicating the absence of such rules.

¹⁷ In Hungary, Competition Law regulates not only vertical and horizontal practices, but also the unfair influencing of consumer decisions.

76. Member countries' views differ as to how regulation by competition laws should be linked to legal effect under private law. The situation differs between countries where such laws are considered to be a general part of domestic private law (*e.g.* Germany), and countries that strictly confine these acts to the domain of administrative regulation and are extremely cautious about directly linking them to legal effect under private law (*e.g.* Japan).

77. In Germany, the Unfair Competition Act (UWG) serves to protect competitors, consumers and other market participants from unfair competition. Consumer protection aims at protecting the freedom to make decisions and the other rights and protected interests of the consumer. This protection is ensured in a generally preventive manner through the restraint claims of competition law. Indeed, this claim is granted solely to competitors and specific consumers' associations and chambers, and not to individual consumers, in order to avoid the risk of collective action. It cannot be denied that this special law has played an important role as a consumer protection law.

78. Australia and then New Zealand have developed extensive fair trading legislation, especially prohibitions on misleading conduct in trade, which can be enforced by regulators, other firms (most commonly) and consumers.

79. Extensive fair trade and related consumer protection legislation enacted in common law member countries, such as Canada, Australia, New Zealand and the United States, provide both administrative remedies and rights of civil action. In some cases these laws are also enforced by self-regulatory organisations.

80. In the United States, the Federal Trade Commission Act provides that "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce" are unlawful. The Commission is empowered and directed to prevent persons, partnerships or corporations "from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce". On the other hand, New York state law allows the right of civil action to any person who is injured as a result of deceptive acts or practices. Section 349(a) of the New York General Business Law prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. Section 349(h) provides that in addition to the right of the Attorney General to seek injunctive relief and restitution under Section 349(a), any "person" injured as a result of the prohibited deceptive acts or practices "may bring an action in his own name to enjoin such unlawful act or practice", and may also seek to "recover his actual damages or fifty dollars whichever is greater".

81. In the EU, the Unfair Commercial Practices Directive (UCP)¹⁸ contains a general clause prohibiting unfair commercial practices which are contrary to the requirement of professional diligence and which materially distort the economic behaviour of the average consumer. The directive in addition regulates misleading action, misleading omissions and includes a "blacklist" of practices to be prohibited in all circumstances. EU national authorities will be responsible for enforcing national transposition of UCP and EU member states must ensure that adequate and effective means of enforcement are in place by 12 December 2007.

18 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC and 2002/65 of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).

82. In EU member countries, provision is made for injunctions to be issued on application by the action of consumer associations, and in this context this means that these civil consumer organisations partly play a regulatory role.

Variety of approaches

83. When improving consumer protection, member countries differ depending on whether they place more emphasis on government regulation and administrative remedies or on self-regulation by business associations participating in the marketplace.

Countries that place primary emphasis on government regulation: Belgium, the Czech Republic, Canada, Hungary, Iceland, Korea, Mexico, New Zealand, Poland, the Slovak Republic, the United Kingdom and the United States

84. The reason for this emphasis in Canada is that while general common law remedies (civil law remedies in Quebec) for breach of contract or injury caused by negligence apply to consumers of goods and services in the same way as they would apply to anyone, it is recognised that due to the imbalance of information between the contracting parties, further measures are required to protect consumers sufficiently. The most extensive of these measures is statutory regulation, which subjects sellers and manufacturers to administrative investigation and remedies and possible criminal sanction, as well as preserving a statutory right of civil action. However, it should also be noted that voluntary codes and related policies, which encourage businesses to conduct themselves in ways that benefit both themselves and the community, also play a role in the Canadian consumer protection regime.

85. The reason for this emphasis in Poland and the Slovak Republic appears to be the comparative immaturity, or in some cases non-existence, of private law remedies. It is to be noted, however, that enforcement in Poland tends to be the responsibility of the President of the Office of Competition and Consumer Protection whose jurisdiction is aimed more at the protection of collective consumer interests than of individuals. It is also clear that for certain member countries membership in the European Community has resulted in new legislation. In common law jurisdictions, however, the reverse is somewhat the case. For example, in the United Kingdom consumer protection has long been provided by common law courts, so that the main impetus behind more recent legislation in this area is not gaps in common law; rather it is the requirements of EC directives, and the need to reformulate domestic law in line with European principles and to implement specific directives. Again, financial services have been a priority area. A similar effect can be seen in Hungary, where many of the more recent reforms in this area clearly stem from EU membership requirements.

86. New Zealand has traditionally adopted this approach. However, it has become more reticent about enacting specific legislation as deregulation has accelerated since the mid-1980s, generating a preference for more general rules or self-regulation.

87. In Mexico, legislation has been used to make significant advances in consumer protection. The general laws and customs of Mexico have not historically given consumers a broad range of rights in relation to producers and suppliers of goods and services. Although general consumer provisions have been in effect since 1975, it was necessary to harmonise and integrate these provisions into the Federal Consumer Protection Law of Mexico (FCPL) of 1992, as amended. This law introduced significant new protection for consumers, in order to safeguard their equity and legal security in the context of relations between providers and consumers. Under this scheme the emphasis of enforcement activity lies with the Consumer Protection Federal Agency, to which consumers must submit their complaints.

88. In the United States, federal laws such as the Truth-in-Lending Act, Home Ownership and Equity Protection Act, Real Estate Settlement Procedures Act, Fair Debt Collection Practices Act, Securities Act and Securities Exchange Act regulate specific areas of business including loans and securities. These laws are considered important in particular for protecting consumers' financial interests. For instance, the purpose of the Truth-in-Lending Act is to require lenders to give consumers an understandable disclosure of credit costs so that consumers are able to make an informed decision. The purpose of the Home Ownership and Equity Protection Act (HOEPA) was to combat the problem of "reverse redlining", the practice of targeting residents in certain geographic areas for credit on unfair terms (predatory lending). The overall effect of such statutory laws in the United States' consumer protection law, however, must be considered in combination with rules enforced by self-regulatory organisations and administrative initiatives issued by the FTC and other government agencies, as noted.

89. What is discussed here, therefore, is not so much a wholesale difference of approach, as one of emphasis. While it is generally the case that member countries will combine some form of mechanism in both areas (that is, government regulation or an attempt to introduce developments consensually and self-regulation) the extent and prioritisation of each varies from country to country.

The countries that place a significant emphasis on the voluntary/consensus solutions of industries and associations participating in the marketplace: Denmark, Japan, Finland, the Netherlands, Norway and Sweden

90. In the Netherlands, the reason for this emphasis is that social consensus, referred to as the "Polder Model", is an important priority, and is considered a characteristic not only of its Consumer Act but also of Dutch society as a whole.

91. There are also indications of this emphasis in Norway. The Consumer Ombudsman (CO) is an independent administrative body with responsibility for supervising measures in the market which seeks to influence traders to observe the regulatory framework. The CO considers cases following complaints from consumers or traders. There is first an attempt to arrive at voluntary arrangements through negotiations with traders, but if there is a failure to reach a solution, the CO may submit the case to the Market Council (MC), which functions as a "court of law" in that field. The CO and the MC have authority to issue decisions banning unlawful marketing and contract terms and conditions in standard contracts when they deem it necessary in the interests of consumers. It can therefore be seen that some emphasis on voluntary solutions as an alternative to legal enforcement there exists in Norway. However, in the event of a failure to resolve the problem voluntarily, a legal remedy may be sought as a last resort. Furthermore, the Consumer Council is an independent organisation representing the interests of consumers and the CO has issued a number of guidelines which give information about the interpretation of the Marketing Control Act (MCA). The objectives of the Consumer Council are to work to increase consumer influence in society, to contribute to consumer-friendly developments, and to promote measures that strengthen the position of consumers. The Consumer Council is free to develop an independent consumer policy and is independent of commercial interests and other organisations. It helps to promote consumers' interests by influencing authorities, organisations and businesses, educating consumers through information, advice and guidance, or providing assistance to individual consumers.

92. Finland similarly takes a consensual approach to the solution of consumer problems. The Consumer Ombudsman issues guidelines and consults with businesses on them. The Consumer Agency, the Finnish Direct Marketing Association and the Finnish Periodical Publishers' Association have started a co-operative project to correct problems regarding telemarketing of magazines. At the beginning of October 2006 the Consumer Agency informed the associations of complaints concerning telemarketing

practices and the associations have since undertaken to deal with the complaints immediately. The goal of the project is said to be to eliminate “empty promises” from telemarketing.

93. In Japan, the primary emphasis for consumer protection was historically on control by way of government regulations. However, such regulations were recently found to be insufficient to deal with the kinds of consumer issues that have started to arise. There were incremental developments in the law in the 1990s. For example, in addition to the enactment of the Product Liability Act, the scope of protection for consumers was further extended with limited amendments to the Door-to-Door-Sales Law, which now provides for a cooling-off period (see the Specified Commercial Transactions Act). However, since the beginning of this century, Japan has shifted emphasis more decisively towards voluntary and consensus solutions with industries and associations as part of a major series of amendments to the 1968 Consumer Fundamental Act that were introduced by the Consumer Basic Act of 2004. In addition, there have been steps towards adopting a third approach, that is, of granting initiatives to consumer associations. In that context, a consumer collective lawsuit system was also introduced by way of a 2006 amendment to the Consumer Contract Act 2000, although this has not yet been fully implemented.

94. In countries such as Canada, Australia and the United States, while regulatory laws are presently given more emphasis, self-regulatory measures are also encouraged. In Canada voluntary codes and policies encourage businesses to comply with certain standards of conduct. In Australia, the objective of well-functioning markets requires policy interventions to be effective and designed to respond to the problem without imposing unnecessary constraints. This is consistent with National Competition Policy and has been facilitated by the establishment of the Office of Best Practice Regulation (formerly the Office of Regulation Review) which ensures that appropriate cost-benefit analyses are undertaken prior to the development and implementation of regulatory proposals. In the United States, suitability rules are enforced through self-regulatory organisations (SROs). The National Association of Securities Dealers (NASD) Conduct Rule 2310 is known as the suitability rule and requires member brokerage firms to recommend a securities transaction to a customer only if the recommendation is suitable in light of the customer’s experience, financial situation and needs.

95. In Sweden, a consensual approach is suggested in light of the key role played by the Consumer Ombudsman in consumer affairs. However, further enquiries are needed to establish more precisely the nature of the balance in his role between enforcement and consensual solutions. It was also noted that some enforcement roles are performed by the Swedish Consumer Agency, and while this may be relevant to the area discussed below, more study is needed. In Denmark, finally, the role of the Consumer Ombudsman was noted but further enquiries are necessary to establish more precisely his functions.

CONCLUSION

96. As a result of the survey, it is clear that the general handling of misrepresentation in the conclusion of consumer contracts, of the duty to supply information, of the suitability rule and of unsolicited offers differs among member countries. The interpretation and categorisation of these four legal issues in the analysis of hypothetical cases also differ from country to country. In fact, it is sometimes difficult to apply the legal systems and rules of member countries to these areas as four separate categories.

97. This survey should not, however, simply be seen as emphasising differences in the treatment of these issues by each member country. By taking account of the characteristics of each member country, plausible multiple normative models for dealing with consumer contract issues may be developed through the combination of various types of regulations and sanctions under the private, administrative and competition laws discussed here.

98. In addition, the survey made possible a study of the relevant legal framework and applicability of the law in the context of the hypothetical case studies. However, the extent to which the law and/or legal framework may be applied to solve specific issues is not examined because there is not enough information to analyse how often and in what terms judges pass judgement in real cases. Since consumers face similar problems associated with consumer contracts throughout member countries, it is also necessary to take the social context into account.

99. Thus, it may be appropriate for each member country to establish a system in accordance with its socioeconomic circumstances, local idiosyncrasies, and cultural characteristics (including legal culture), by reference to those multiple models.

ANNEX. OECD MEMBER COUNTRIES' APPROACHES TO CONSUMER CONTRACTS

The data in these tables are based on the country reports and supplementary comments later provided by member countries. If some countries have no entry in some columns such as penal rules, it does not necessarily mean that they do not have such rules and enforcement power.

1) Obligation of information provision

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Australia	(1) <i>General Unconscionable conduct</i> 2) <i>Consumer protection</i> Misleading or deceptive conduct 3) Remedies for 1 & 2 4) <i>Financial Services and Products</i> similar protections to 1 and 2 above 5) Product Disclosure Statements needed for financial products ('PDS') (6) <i>Insurance</i> Some regulation of insurance contracts	(1) TPA 1974 ss 51AA-51AB, 52, 53 (3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided.	(2) TPA 1974 ss 51AA-51AB, 52, 53 (3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided .	(4) <i>Financial Services and Products</i> : ASICA 2001, ss12GD, 12GF, 12GM, 12GN; CA 2001. (5) 'PDS' – CA 2001, Part 7.9, Division 2 (6) <i>Insurance</i> ICA 1984.	A. Under TPA 1974, the ACCC may accept, amongst other things, undertakings from a party in breach (s87B). B. Under ASICA 2001, the ASIC may do the same (s93A). C. Consumer Credit Code	For certain breaches (for example when an advisor gives "personal advice" under CA 2001) particularly in the financial sector, there are criminal sanctions. Similarly, a breach of the prohibitions on unfair practices may also be subject to criminal sanctions.	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Austria	precontractual duties (information et al.)	Legal analogy from §§874, 878 ABGB, §16 VersVG	Legal analogy from §§874, 878 ABGB, §16 VersVG				
	Fraud	§870 ABGB	§870 ABGB				
	Mistake	§§871 <i>et seq.</i> ABGB	§§871 <i>et seq.</i> ABGB				
	Against public policy / breach of law	§879 ABGB	§879 ABGB				
	Various specific consumer contracts			§§3, 3a, 5c, 5d, 9b, 24, 26, 26d, 27c, 27d, 30b, 31c KSchG, §§5, 9 ECG			
	Penal rules ABGB					§§872 <i>et seq.</i> ABGB, §877 ABGB, §§1293 <i>et seq.</i> ABGB	
	Penal rules StGB					§§146 <i>et seq.</i> StGB, §150 StGB, §166 StGB, §20 f StGB	
Belgium		N/A	LPC Art. 2-5,10,13, 23, 23§5, 25, 30, 37, 78, 79, 80§2,86-92	LAA [require prior consent]	Act of 11 March, 2003 on some legal aspects of information society services Art. 7-10,13,13§2,	LPC Art. 102-110;	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Canada		Federal Constitution, Provincial and Territorial statutes.	Competition Act (R.S.C.1985, c. C-34 (Part VII.1), provincial Consumer Protection Acts and Business Practices Acts (Alberta Fair Trading Act, R.S.A. 2000, C. F-2, Ontario Consumer Protection Act (S.O. 2002, c.30 Sch.A (Art. 5), Quebec Consumer Protection Act (R.S.Q. c. P-40.1, s. 228), Quebec Contract Laws regarding Consumer Protection (C.C.Q. Arts. 1379 and 1435-1436).	The Competition Act (R.S., 1985, c. C-34) (telemarketing sales), Consumer Packaging and Labelling Act (R.S.C., 1985, c. C.38), Hazardous Products Act R.S.C. 1985, c. H-3), Food and Drugs Act (R.S.C, 1985, c. F-27), Motor Vehicle Safety Act (R.S.C. 1985, c.M-34), Interest Act (R.S.C.1985, c.I-15), Collection Agencies Act, R.S.O.1990, Ch. c.14.	Cost of Borrowing (Banks) Regulations (SQR.2001-101) under the Bank Act, Credit and Personal Reports Regulation, Alta. Reg. 193/99; U.S. Federal Trade Commission's 1983 statement on deception is also used as guidance.	Criminal Code (R.S.C. 1985, c. C-46 s.347), which regulates the cost of borrowing smaller amounts and creates a criminal rate of interest at 60%. The definition of interest under the Criminal Code is very broad and includes fines, penalties, commissions and "other similar charges;" The Ontario Consumer Protection Act of 2002 – upon conviction, companies, their officers, directors and employees, as well as individual subjects are liable to fines are up to CAD 50 000 for individuals, CAD 250 000 for corporations, and/or imprisonment up to two years less a day (s.116). Upon conviction, a court also has authority to order compensation.	Not addressed in questionnaire responses.

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Czech Republic		Civil Code Secs 34-51a	Civil Code Chap.5 (Art.52) [Consumer agreements]; Art.53 (3, 4), 53a, 54b, 57 (3), 58 [duty of information]; Art.53a [electric communication]; 54b, 57(2) [away from business premises]; 58, 60 [timeshare]; Art.53(7),54b(4),57(1)(2) [withdrawal right]; 49(a)[mistake]		CPA [seller's obligation]; Secs 9(1),11 [use of Czech language]; Sec.10, 10(3)(8), 10a, 28b [visible mark; labelling on specific products] relevant ministerial decrees [Regulations on footwear, textiles, crystal glass respectively]; Act on Certain Conditions for Businesses in Tourism Sector (No. 159/1999 Coll.), the Act on Prices (No. 526/1990 Coll.), the Act on some services of information society (No 480/2004 Coll.), the Act on Certain Conditions for Conclusion of	fine(CPA, Sec.24(1));Injunction (CPA,Sec.23a)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
					Consumer Credits (No 321/2001 Coll.), and the Act on Insurance Agreement (No 37/2004 Coll.)		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Denmark	The Sales of Goods Act		Sec. 75 (1)				
	The Price Marking and Display Act		Sec. 1(1), Sec. 1(2), Sec. 5(1) & (2); for sanctions, Sections 1, 2 and 5 (Sec. 12(1)).				
	The Consumer Contracts						
	The E-Commerce Act			Sec. 7, 8 & 10			
Finland		Contracts Act Chap.5-10	Consumer Protection Act		Decree on the Information to be Provided in the Marketing of Residences (1983) (Market Court; Consumer Ombudsman; State Provincial Office)	Injunction (CPA Ch.2 Sec.7)	See CPA Chap 11 (Penal Prov.)

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
France	General pre-contractual obligation of information		Art. L 111-1, Art. L. 111-3 of the Consumer Code, Arts. L. 121-18 and following	Art. 19 of the Law n° 2004-575 of 21.06.2004 (distant sales); Art. L. 212-61 of the Consumer Code (time-shared use of property by consumers); Art. 5 I of Order of 30.04.2004 (electricity sector); Order of the 21.02.1991 (franchising sector); Orders n° 95-653 of 9.05.1995 and 11.01.1999 (funeral homes); Art. 6 of Law n° 89-421 of 23.06.1989 (marriage bureau); Order n° 78-75/P of 30.06.1978 (car sellers); Law n° 92-645 of 13.07.1992 and Order n° 94-490 of 15.06.1994 (travel agencies)			
	Obligation of disclosure of specific information	Arts. 1369-1 and following of the Civil Code (electronic contracts); Art. 1602 of the Civil Code (sale contract)					
	Obligation of disclosure of specific information		Art. L.111-2 of the Consumer Code (Obligation of information as to availability of pieces)				

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Obligation of disclosure of specific information		Art. L113-3 of the Consumer Code (general obligations of disclosure as to prices) and Art. R113-1 of the Consumer Code, Order of 3 December 1987 and the Circular of 19 July 1988, Order of 16 November of 1999, Order n° 83-50/A of the 3 rd of October 1983				
	Obligation of disclosure of specific information		Art. L. 114-1 of the Consumer Code (delivery deadlines)				
	Obligation of disclosure of specific information		Art. L. 134-1 and Art. R134-1 of the Consumer Code (delivery of a copy of the conventions)				
	Obligation of disclosure of specific information		Art. L. 136-1 of the Consumer Code (renewal of a contract)	Renewal of a contract: Insurance Code in Art. L. 113-15-1, in the Mutuality Code in Art. L. 221-10 and in the Social Security Code in Art. L. 932-21-1			
	Obligation of disclosure of specific information		Arts. L121-83 to 85 of the Consumer Code (electronic communications)				
	Obligation of disclosure of specific information		Art. L. 311-4 and following of the Consumer Code (consumer credit)				

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Obligation of disclosure of specific information		Arts. L. 312-4, L. 312-5, L. 312-9 and L. 312-14-1 of the Consumer Code (mortgage loan)				
	Obligation of disclosure of specific information		Art. 313-2 of the Consumer Code (loan contract)				
	Obligation of disclosure of specific information		Art. L211-15 of the Consumer Code (written commercial guarantee)				
	Obligation of disclosure of specific information		Arts. 313-9, 341-1 and 341-6 of the Consumer Code (Surety agreement)				
France	Obligation of disclosure of specific information		Art. L. 312-1-1, Art. L313-21, Art. L313-22 of the Monetary and Financial Code (Credit institutions)				Art. L533-4 of the Monetary and Financial Code (Credit institutions)
	Obligation of disclosure of specific information		Arts. L.112-2, L.132-5 and L.132-5-2 and Art. L. 520-1 of the Consumer Code (Insurance companies)				

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Germany	Civil Code	Sec. 119 ff. BGB (mistake), Sec. 123 BGB (fraud or threat), Sec. 134 BGB (breach of law), Sec. 138 BGB (<i>bonos mores</i> / against public policy), Sec. 241 (2) BGB (duty to protect the other party's interest), Sec. 242 BGB (good faith), Sec. 305 ff. BGB (standard terms of contract), Sec. 311 (2) BGB (<i>culpa in contrahendo</i>)	Sec. 355 BGB (right of withdrawal)	Sec. 312 ff. BGB (door-to-door sales), Sec. 312c BGB (distance selling) → Sec. 1 BGB-InfoV, Sec. 312d BGB (right of withdrawal), Sec. 312e BGB (e-commerce) → Sec. 3 BGB-InfoV, Sec. 474 ff. BGB (consumer sales contract), Sec. 481 ff. BGB (time sharing) → Sec. 2 BGB-InfoV, Sec. 491 ff. and 505 ff. BGB (consumer credit and similar contracts), Sec. 651a BGB (package travel) → Sec. 4-11 BGB-InfoV, Sec. 655b BGB (brokerage of consumer credit), Sec. 675a BGB (credit institution) → Sec. 12 BGB-InfoV			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Unfair Competition Act				Sec. 4 (4) UWG (advertising with a reduced price), Sec. 4 (5) UWG (organising prize drawings), Sec. 5 UWG (misleading advertising) (→ Sec. 3 UWG (general clause), Sec. 8 UWG (injunction), Sec. 9 UWG (damages), Sec. 10 UWG (skimming off of profits)		
	Prohibitory Injunctions Act				Sec. 2 UKlaG (injunction)		
	Insurance Contract Act			Sec. 5a (1) VVG (insurance contract) (in connection with Sec. 10a VAG)			
	Securities Trading Act			Sec. 31 (2) s.1n.2 WpHG (information obligations), Sec. 37d (4) WpHG (information obligations of futures trading)			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Criminal Code					Sec. 263 (1) StGB (fraud), Sec. 291 StGB (usury)	
Hungary		Civil Code	Act CLV. 1997. on consumer protection	Gov. Decree 213/1996. and 214/1996. on package travel and package tours Gov. Decree 17/1999. (II.5) on Distance contracts Gov. Decree 20/1999.(II. 5.) on timeshare Gov. Decree 370/2004.(XII.26.) on doorstep selling	Competition Act Sec.8 (prohibition of misleading act)		
Iceland	(1) General protections (<i>none noted in English translation</i>) (2) Consumer information requirements – (<i>none noted in English translation</i>) (3) Labelling requirements (4) Financial Services		(3) Art. 5 of the Competition Law [No 8/1993]	(4) Act on Consumer Credit [No 121/1994]			

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Italy			Consumer Code Art. 2 (fundamental rights of consumer)	Consumer Code Art. 52, 53 (distant contracts); Consumer Code Art. 68 (electronic commerce); Consumer Code Art. 45-47 (contracts outside of the business premises); Consumer Code Art. 104 (safety of products); <i>Decreto legislativo 19 agosto 2005</i> , n.190 (distance marketing of financial services to consumer)			
Japan	Consumer Basic Act						Art.5 (1) No.2
	Consumer Contract Act						Art.3 (1)

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Commodity Exchange Act				Obligation to furnish written statement; Art.217, Art.214.No.9, 218 (1) (Content of discipline) Art.231, 232, 236 (Content of Supervision) ← The Minister of Agriculture, Forestry and Fishery, Minister of Economy, Trade And Industry	Art. 361, 362 (← Art.231, 232, 236)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Real Estate Transaction Business Act				Obligation to furnish written statement; Art.37 Art.35 (Content of discipline) Art.65 (1) (→65 (2) No.3, 65 (3) No.2), 65 (2) No.2, 65 (3) No.2 (← Art.35), 66 (1) No.9 (Content of Supervision) ← Minister of land, infrastructure and transport, prefectural governors	Art. 79 (4) (← Art.65 (2), 65 (4))	
	Travel Agency Act			Obligation to furnish written statement; Art.12-4 No.2, 12-5 Art.12-4 (1)			
	Trust Business Act			Obligation to furnish written statement; Art.26 Art.25, 26			
	Act on Specific Joint Real Estate Business				Obligation to furnish written statement; Art.24, 25		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	“Comprehensive Supervising Guideline for Financial Futures Brokers” based on the Financial Futures Trading Act (the Financial Services Agency)				II-3-8 (Fulfilment of accountability to clients) II-3-10 (Issuance of written statement before concluding contracts)		
Korea	Door-to-Door Sales Act; Promotion of Information & Communication Network Utilization and Information Protection Act; Consumer Protection in Electronic Commerce Act; Door-To-Door Sales Act; Credit-Specialized Financial Business Act; Insurance Business Act	Art. 3 of Regulation of Adhesion Contracts Act (Violation of Obligation to Specify and Explain Adhesion Contracts→An enterprise may not claim that the pertinent adhesion contract forms a part of the contract)			There are many. Executive body is each competent authority (sector specific)	Some administrative rules also have penal rules as a sanction against violation of rules.	Art. 3 of Consumer Protection Act (Consumers' Fundamental Right)
Mexico		Civil Federal Code Art. 1795 (validity of contracts/consent)			Federal Consumer Protection Law (FCPL) Arts. 1, 32-34, 41, 64-66, 85 (in the area of self-financing, time sharing, repair of vehicles, etc.), 99, 100,	General rule (FCPL 125), fine (FCPL Art.127: in case of violation of Art.32-34 & 66; Art.126 in case of violation of Art.1)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
					105 (right to sue); Metrology and Standardization Federal Law (technical standards) Secretariat of Economy (insurance) Consumer Protection Federal Agency (enforcement) Metrology and Standardization Federal Law (technical standards)		
Netherlands	(1) Fraud (2) Inaccurate information/mistake	(1) Civil Code – Bk 3, Art.44, para 3 (2) Civil Code – Bk 6, Art.23					
New Zealand	(1) Common law, (2) Legislation	(1) <i>Contra proferentem</i> and other rules restrictively interpreting exclusion clauses	(2) Fair Trading Act s9 (misleading conduct) – silence can be "misleading", so incentive to disclose more info [cf s13 "false representation" – following common law, silence is not misrepresentation]	(2) Credit Contracts and Consumer Finance Act; (2) Securities Act [under review]	(2) Fair Trading Act s28 (labels, used vehicles), s29 (safety of specified products)	(2) Fair Trading Act s40 (offence if breach ss 28-29 [or s13; but not s9]); (2) Credit Contracts Act s103 (offence for non-disclosure)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Norway			The CPA; (remedy: detainment of contractual payment, claim for delivery of the goods, termination of the contract and claim for damages etc.) Sec. 16 (1)(b) (duty to inform)	The Act on Sale of real property; Sec. 3-7	The MCA; Sec. 1 (general provision), Sec. 2 (misleading business methods), Sec. 3 (insufficient guidance etc.) and Sec. 9d (requirements concerning guarantee conditions in the relationship with the consumer)	The MCA; Sec. 16 and 17 (injunctions combined with fines, imprisonment of up to 6 months), Sec. 17 (misdemeanour (infringement of Sec. 1)	
Poland	(1) General obligations in the Civil Code, Books I & III (2) Consumer protection as "unfair competitive practice" (3) Consumer protection associated with product safety (4) Clarity of information, in Polish, not misleading (5) Enforcement provisions		(2) Act on competition and consumer protection: Arts. 3, 5, 6, 8, 10, 14, 16, 17. Act on combating unfair competition: Arts. 3, 5, 6, 8, 10, 14, 16, 17 (3) Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product: Arts. 1-9, 13, 16 (4) Act on specific terms and conditions of consumer sale and amendments to the Civil Code: Arts. 2, 3, 10, 11			Under the Act on combating unfair competition, the President of the Office for Competition and Consumers Protection can enforce if the act of unfair competition threatens or violates consumer interests. The penal provisions are set out in Arts. 23 to 27. In certain cases these include imprisonment up to 2 years. All offences are associated with a power of arrest.	

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Slovak	<i>Information on specific provisions not supplied so entries are generally descriptive only</i>	Contract concluded on the basis of fault is invalid.	Obligations of product information disclosure. Duty not to mislead. Remedies for discovery of defect.				
Spain	General disclosure requirements		Arts.13 to 18 of the General Law for the Defence of Consumers and Users	Art.5 of the Law 7/1998, 13 April (general conditions of contracting), Royal Decree 1906/1999, 17 of December (contracting through the telephone or via electronic means), Arts.20, 22, 27, 28 of the Law 34/2002, 11 July, on services of the information society electronic commerce (LSSI), Arts. 5, 11, 44, 45, 47 of the Organic Law 15/1999, 13 December, on personal data protection			
	Specific obligations of information for various sectors of activity			Arts.19, 29, 38 of the Law 7/96, 15 of January, on retail trade, modified by the Law 55/1999, 29 December			
	Specific obligations of information for various sectors of activity		Royal Decree 3423/2000, 15 December (information on prices)				
	Specific obligations of information for various sectors of activity			Law 7/1995, 23 March, on consumer credit			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Specific obligations of information for various sectors of activity			Rule 13 of the Circular 1/1996, 27 March, of the CNMV (operations of the stock market)			Proceedings guidelines of the <i>Comisión Nacional del Mercado de Valores</i>
	Specific obligations of information for various sectors of activities			CIRCULAR 8/90, 7 of September (Credit Entities)			
	Specific obligations of information for various sectors of activity			Art. 4 of the ORDER PRE/1019/2003, 24 April, on transparency of prices of banking services through cash machines			
	Specific obligations of information for various sectors of activity			Art. 9 of the Order ECO/734/2004, 11 March, on customers departments of financial entities			
	Specific obligations of information for various sectors of activities			Telecommunication services: ORDER ITC/912/2006, 29 March, on regulation of the conditions in relation to the quality of the service of electronic communications; ORDER PRE/361/2002, 14 February, on users' rights and additional charged services; ORDER PRE/2410/2004, 20 July, amending the ORDER PRE/361/2002; Resolution of 15 September 2004, on rules of good behaviour for the additional charged services			

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Specific obligations of information for various sectors of activity			Arts. 3 and 8 of Law 50/1980 on insurance contract			
	Specific obligations of information for various sectors of activity			Art. 3 of the Law 21/1995, 6 July, regulating travel packages			
	Specific obligations of information for various sectors of activity			Arts. 8 to 10 of the Law 42/1998, 15 December, on time share use of tourist properties			
Sweden	(1) General information provision obligations in contracts of sale 2) Information obligations concerning consumer sales 3) Information obligations relating to product safety 4) Information obligations in specific areas – particularly financial services & time share 5) Bad marketing practices / correct descriptions	(1) Contracts Act s36 (1915:218)	(2) Consumer Contracts Act (1994:1512), s10, s11 s12; (3) Product Safety Act (2004:451) – s2, s3, s13, s14, s20 (5) Marketing Act (1995:450) – s3, s14, s19 / s2, s5-s11	(4) Financial Advisory Services to Consumers Act (2000:862); Securities Business Act (1991:981) (4) Timeshare Contract Act (s4)	(4) <i>Finansinspekti onen</i> issues regulatory codes for specific areas in financial sector, <i>i.e.</i> securities, investments, insurance; Guidelines in the area of product safety		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Switzerland		Federal Law on Unfair Competition (LCD) (requirements to state: trade name, price (Art.3(k), and in case of advertising smaller loans (Art3(l); issuing prohibition, suspension, declaration in civil proceedings (LCD Arts.9,10)	CO (40d) [right to revocation, time, burden of proof re. door-to-door sales, similar contracts]	Code of Obligations (CO) [necessary information provisions and form of information: real estate sale (Art.216); sale with preliminary payments (Art.227a); lease (Art.256a); guarantee (Art.493) Law on Package Tours, Law on Consumer Credit, Law on Contracts of Insurance, Law on the Monitoring of Insurance; Law on Telecommunications.		Federal Law on Unfair Competition (LCD): intentional violation: imprisonment or fine up to CHF 100 000 (LCD23)	
United Kingdom	(1) Requirements at common law not to mislead a person who has relied on accuracy of statements in context of the transaction 2) Requirements under SOGA 1979 for goods to conform to their description, including information in advertising or labelling. (3) Remedies under SOGA 1979 4) Information requirements in specific legislation or regulations including: consumer credit, estate agents,	(1) The common law doctrines of misstatement/misrepresentation and/or the Misrepresentation Act 1967 (MA 1967) may apply. The remedies are generally damages, but under the MA 1967, the contract may also be rescinded.	(2) Sale of Goods Act 1979 ("SOGA 1979") as amended by Sale and Supply of Goods Act 1994 and the Sale and Supply of Goods to Consumers Regulations 2002. See s13, s14(2A), s14(2C), s14(2D), s14(2E), s14(2F) of SOGA 1979 (3) Remedies – s35, s53, s53(1)(a), s48A-F	(1) Insurance contracts – doctrine of <i>uberrimae fides</i> (burden of information also on the consumer) (4) CCA 1974 (s8, 55, 60, 61, 62, 63, 64, 65); Estate Agents Act 1979 (s18); Timeshare Act 1992	(4) CPR 1987 (cancellation of contracts concluded away from business premises); CPR 2000 (distance selling); ECDR (Financial services and markets) 2002/1775; ECDR 2002/2013; CCO1974 (Disclosure of Information); CCR 2004; PPT 1992; Timeshare		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	timeshare, e-commerce, distance selling, financial services.				(Cancellation Information) Order 2003; PECR 2003 [OFCOM]; FSR 2004 [OFT; Financial Services Authority; Enterprise Act Pt.8]; E-Commerce (EC Directive) Regulations 2002 (No 2013)		
United States		No generally applicable law; each state has own substantive law; Federal statutes govern specific transactions and/or sectors Restatements are summaries of general legal principles (e.g. Restatement (2d) of Contracts §159 <i>et seq.</i> , Restatement (2d) of Contracts §175 <i>et seq.</i> , Restatement (2d) of Torts §525 <i>et seq.</i>)	Delaware Deceptive Trade Practices Act, Georgia Uniform Deceptive Trade Practices Act, Illinois Uniform Deceptive Trade Practices Act, New York General Business Law §349-350, Ohio Consumer Sales Practices Act, Indiana Deceptive Consumer Sales Act, Washington Consumer Protection Act (Rev. Code Wash. 19.86), Uniform Deceptive Trade Practices Act (U.D.T.P.A.)	Magnuson-Moss Warranty Act, Real Estate Settlement Procedures Act (RESPA), Truth-in-Lending Act and The Home Ownership and Equity Protection Act of 1994, Telemarketing and Consumer Fraud Abuse and Prevention Act, The Fair Debt Collection Practices Act	The Securities Exchange Act of 1934, Federal Trade Commission Act, Lanham Act, Credit Practices Rule, 49 Fed. Reg. 7740, 7743 (March, 1984).	Not addressed in questionnaire responses	Not addressed in questionnaire responses

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
European Commission	Directive 2005/29/EC concerning unfair business-to-consumer commercial practices, Art.5, 6, 7, 8 and Annex I.			<p>Council Directive 90/314/EEC (package travel): Art. 4(2) (the information that must be given to consumers)</p> <p>Council Directive 93/22/EEC (investment services in the securities field): Art. 11 (1)-5 (adequate disclosure of relevant material)</p> <p>Directive 94/47/EC (timeshare contracts): Art. 3 and Art. 4, Art. 5</p> <p>Directive 97/7/EC (distance contracts): Art. 4 and Art. 5, Art. 6</p> <p>Directive 2000/31/EC (e-commerce): Art. 5, Art. 6, Art. 10</p> <p>Directive 2002/65/EC (distance sale of financial services): Art. 3, Art. 4 and Art. 5, Art. 6</p>			

2) Suitability rules

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Australia	(1) <i>General Unconscionable conduct</i> (2) <i>Consumer Protection Misleading or deceptive conduct</i> (3) Remedies for 1 and 2 (4) <i>Financial Services and Products</i> similar protections to 1 and 2 above	(1) TPA 1974 ss 51AA-51AB 3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided.	(2) TPA 1974 s52 (3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided.	(4) <i>Financial Services and Products</i> ASICA 2001, ss12GD, 12GF, 12GM, 12GN; CA 2001.	ACCC may accept, amongst other things, undertakings from a party in breach (s87B). B. Under ASICA 2001, the ASIC may do the same (s93A). C. Consumer Credit Code	For certain breaches (for example when an advisor gives "personal advice" under CA 2001) particularly in the financial sector, there are criminal sanctions. Similarly, a breach of the prohibitions on unfair practices may also be subject to criminal sanctions.	
Austria	Capacity to contract	§865 ABGB	§865 ABGB				
	Fraud	§870 ABGB	§870 ABGB				
	Mistake	§§871 <i>et seq.</i> ABGB	§§871 <i>et seq.</i> ABGB				
	Against public policy / breach of law	§879 ABGB	§879 ABGB				
	General right of withdrawal regarding mistake		§3a KSchG				
	Illegal contractual provisions		§6 KSchG				

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Door-to-door sales, distance selling, contract of (real estate) brokerage, travel operator contractors, matchmaking contracts, <i>et seq.</i>			§§3 f KSchG, §§5a <i>et seq.</i> KSchG, §§15 <i>et seq.</i> KSchG, §§30a <i>et seq.</i> KSchG, §§31b <i>et seq.</i> KSchG, §54 Abs 3 GewO, §12 WAG, §4 <i>der VO über Ausübungsvorschriften für Partnervermittler</i> (BGBl 1987/434)			
	Penal rules KSchG					§32 KSchG, §§25a <i>et seq.</i> KSchG, §§3 <i>et seq.</i> KSchG, §§5a <i>et seq.</i> KSchG	
	Penal rules ABGB					§§872 <i>et seq.</i> ABGB, §877 ABGB, §1293 <i>et seq.</i> ABGB (plus provisions in already mentioned specific types of contract)	
	Penal rules StGB					§§146 <i>et seq.</i> StGB, §150 StGB, §166 StGB, §20 <i>et seq.</i> StGB	
Belgium		N/A	LPC Art. 22-29 (Advertising)	N/A	French Community: Decree of 27 February, 2003 related broadcasting) Art. 22-28, and Decree of 14 July, 1997 on the statute of the Belgian Radio-Television of the French Community (RTBF). Flemish Community: Decree of 12 June, 1991,		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
					Art.4(1) and (5). Act of 11 March, 2003 on some legal aspects of information society services, Art.7-10, 13, 13§2		
Canada		No generally applicable rules; common law concepts such as duress, undue influence and unconscionability may fall into this category; Arts. 6-9, 1375, 1399, 1402-1403, and 1406-1407 of the C.C.Q. (Quebec)	No generally applicable rules; common law concepts such as duress, undue influence and unconscionability may fall into this category; Quebec Consumer Protection Act Arts. 8-9; Ontario Consumer Protection Act of 2002 s. 10, 15 (2)(h); Alberta Fair Trading Act, s.6 (3)(b)	Ontario Consumer Protection Act of 2002, s.28 (timeshare sales), s.43 (door-to-door sales).	Not addressed in questionnaire responses	Ontario CPA 2002, Part.III allows prosecution of "rogue businesses" or "scam artists," for example, if the seller used unfair practices which include misrepresentation through deception or failing to state material facts such that a deceptive outcome results or by unconscionable acts then the seller has also committed an offence and is subject to prosecution and penalties including fines and/or imprisonment. There is no monetary threshold before these provisions apply.	Not addressed in questionnaire responses

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Czech Republic		Civil Code Secs. 34–51a			Consumer Protection Act, Sec. 7(3) (advise in case of sale of dangerous products); Sec. 10 (5), 13 (advise in case of sale of modified product or that with defect or service)		
Denmark	No laws						
Finland		Contracts Act Sec.31		Act on Distance Selling of Financial Services and Instruments			
France	Duty to advise	Arts. 1135 and 1602 of the Civil Code	Art. L . 111-1 of the Consumer Code				
	Principle of proportionality		Art. L. 313-10 of the consumer Code and Art. L. 341-4 of the Consumer Code				
	Rules of good conduct						Art. L533-4 and Art. L. 613-15 of the Monetary and Financial Code, Art. L341-11 of the Monetary and Financial Code, Arts. 19 and 20 of the order n° 96-3 of the <i>Commission des Opérations de Bourses</i>
	Insurance companies			Art. L. 520-1. II of the Insurance Code			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Germany	Civil Code	Sec. 119 ff. BGB (mistake), Sec. 123 BGB (fraud or threat), Sec. 134 BGB (breach of law), Sec. 138 BGB (<i>bonos mores</i> / against public policy), Sec. 241 (2) BGB (duty to protect the other party's interest), Sec. 242 BGB (good faith), Sec. 305 ff. BGB (standard terms of contract), Sec. 311 (2) BGB (<i>culpa in contrahendo</i>)	Sec. 355 BGB (right of withdrawal)				
	Unfair Competition Act				Sec. 4 (2) UWG (inexperience of consumer (in particular, children) (→ Sec. 3 UWG (general clause), Sec. 8 UWG (injunction), Sec. 9 UWG (damage), Sec. 10 UWG (skimming off of profits)		
	Prohibitory Injunctions Act				Sec. 2 UKlaG (injunction)		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Securities Trading Act			Sec. 31 (2) s.1n.1 WpHG (exploration obligations)			
	Criminal Code					Sec. 291 StGB (usury)	
Hungary					Act CXII. 1996. on Credit Institutions and Financial Enterprises (Sec. 201) Act LX. 2003. on Insurance Institutions and the Insurance Business (Sec. 8) Act C. 2003. on Electronic Communications		
Iceland	(1) Some level of precaution more than protection for children in relation to advertising		(1) Art. 22 of Competition Law N°8/1993				
Italy		N/A	N/A	N/A	N/A	N/A	N/A
Japan	Civil Code					Art.709 (Torts)	
	Consumer Basic Act						Art.5 (1) No.3
	Consumer Contract Act						
	Financial Instruments Sales Act			Art.8		Art. 9 (← Art.8)	Art. 7

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Financial Futures Trading Act				Art.77 No.1 (Content of discipline) Art.85, 86, 87 (1) No.3 (Content of Supervision) ←Commissioner of the Financial Services Agency, Prime Minister	Art. 151 and down (← Art.85, 86, 87)	
	Securities Exchange Act				Art.43 No.1 (→ Art.66-4) (Content of discipline) Art.56 (1) No.3 (exclude, Art.52 (2) (Content of Supervision) ←Prime Minister, Minister of Finance		
	Commodity Exchange Act				Art.215 (Content of discipline) Art.231, 232, 236 (Content of Supervision) ←Minister of Agriculture, Forestry and Fishery, Minister of Economy, Trade and Industry	Art. 361, 362 (← Art.231, 232, 236)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	“Comprehensive Supervising Guideline for Financial Futures Brokers” based on the Financial Futures Trading Act (the Financial Services Agency)				II-3-6 (Suitability Rule)		
Korea	Securities and Exchange Act; Operating Indirect Investment and Assets Businesses Act; Regulation on Supervision of Futures Business	N/A	N/A	Although violations of the “Principle of Suitability” have been considered to be one and the same as violations of “Obligation to Protect Customers”, there have been virtually no cases in which a violation of the principle of suitability has been the primary issue of dispute.	Art. 52 of the Securities and Exchange Act, Art.57 etc of the Operating Indirect Investment and Assets Businesses Act, Art. 46 etc of the Regulation on Supervision of Futures Business	Art.182 of the Operating Indirect Investment and Assets Businesses Act	N/A
Mexico		Federal Civil Law Art. 1795 (validity of contracts/consent)	Federal Law for Consumer Protection Arts. 1, 76		Secretariat of Economy (issuance) Office of the Federal Attorney for Consumer Protection (enforcement)	Chap. XIV Federal Law for Consumer Protection (sanctions)	
Netherlands	(1) Abuse of the Circumstances (2) Product sold exceeding the "asset capacity" of client to perform as required	(1) Civil Code, Art. 44, Bk 3: paras 1, 4	(2) <i>Colportagewet</i> [Door-to-Door Sales Act: 16/11/1995 (Stb. 574)]				

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
New Zealand	(1) Common law, (2) legislation	(1) Duress, undue influence, unconscionability	(2) Consumer Guarantees Act (minimum warranties); [broader Unfair Terms legislation now being reconsidered]	(2) Credit Contracts and Consumer Finance Act 2003 (if contract induced by "oppression")		(2) Consumer Guarantees Act s43 (3) (offence under Fair Trading Act s13 (i) [false representation] if supplier attempts to contract out of minimum warranties)	
Norway		The Act relating to conclusion of agreements etc.; Sec. 33, Sec. 36.	The Cooling-off Period Act; (remedy; the right to cancel, the ordinary cooling-off period; 14 days)		The MCA; Sec. 1 (general provision), Sec. 3 (insufficient guidance etc.) The Timeshare Act; (but this Act is being enforced by the CO, the MC and the police)	The MCA; Sec. 16 and 17 (injunctions combined with fines, imprisonment of up to 6 months), Sec. 17 (misdemeanour (infringement of Sec. 1) The Timeshare Act; (fines or prison up to 3 months)	
Poland	(1) Some controls in relation to advertising that might apply where disadvantaged customers could be affected		(1) Act on combating unfair competition: Art. 16		See relevant entry in Section 1 for enforcement of "Information Obligations"		
Slovak Republic	<i>No information</i>						
Spain	Situations of inferiority, subordination and defencelessness						Arts. 2, 6, 23 and 24 of the LGDCU
	Access to personal data in distant sales		Art. 40 of the Law 7/96 on retail trade				
	Protection of minors						Article 18 of the LSSI

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Transmission of information to the investor in the commercialisation of investment products						Guideline of proceedings of the CNMV, June 2003
Sweden	(1) Door to Door and Distance Selling – 14 day right of withdrawal 2) Deceit / good faith 3) Financial Services 4) Bad Marketing Practices	(2) Contracts Act (1915:218), s30 (deceit), s33 (good faith)	Consumer Sales Act, 1) Distance and Doorstep Sales Act, Chapter 4, Section 5 (2005:59) 4) Marketing Act (1995:450) – Sections 3, 14, 19	(3) Financial Advisory Services to Consumers Act (SFS 2003:862) – general obligation to show sufficient care under s5 might include suitability; Securities Business Act (SFS: 1991:981)	(3) and (4) <i>Finansinspektionen</i> issues codes and guidelines for different areas of financial activity (securities, investments, insurance).		
Switzerland		Code of Obligation Art.21 (possibility of termination of contract)		Law on Consumer Credit (requirements of borrowers capacity)			
United Kingdom	(1) "fitness for purpose" under the Sale of Goods Act 1979 2) Regulatory objectives of FSA under s5 of The Financial Services and Markets Act 2000, and rules made hereunder		(1) Sale of Goods Act, 1979, "fitness for purpose"– s14(3) may arguably apply in limited circumstances.	(2) Financial Services Authority ("FAS") set up under Financial Services and Markets Act 2000, and Rules made hereunder, regulate banking, insurance and investments sectors, including their dealings with consumers. Draws up specific rules for specific areas.	FSA Rules-Principles of Business (PRIN). Conduct of Business (COB)		

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
United States		No general law regarding suitability	No general law regarding suitability, but most states have statutes relating to suitability, particularly protecting elderly consumers	Federal Trade Commission Act (marketing to target groups), Tex. Prop. Code §221.041, Fla. Stat. §721.10 (timeshare contracts)	NASD Conduct Rule 2310 (securities transactions), NYSE Rules 405(1), 723, 721(b) (client due diligence)	U.S. Sentencing Commission Sentencing Guidelines §3A1.1(b), Violent Crime Control and Law Enforcement Act of 1994, Senior Citizens Against Marketing Scams Act of 1992 (18 U.S.C. §2326)	Not addressed in Questionnaire responses
European Commission	Directive 2005/29/EC; Art.5 (3)			Council Directive 93/22/EEC; Art.11 (1)-4 Directive 2005/29/EC; Art.5 (3)			

3) Unsolicited offers

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Australia	(1) <i>General Harassment and Coercion</i> 2) <i>Consumer Protection</i> Limits on liability to pay for goods which are delivered unsolicited (3) Remedies under 1 and 2 (4) <i>Financial Products, Services Harassment and Coercion</i> 5) Prohibitions against	(1) TPA 1974 s60 (3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided.	(2) TPA 1974 s64, s65 (3) TPA 1974 s80, Injunction; s82, Damages; s86-7, Contract avoided.	(4) ASICA 2001 s12DJ, s12DM, s12DN 5) CA 2001	A. Under TPA 1974, the ACCC may accept, amongst other things, undertakings from a party in breach (s87B). B. Under ASICA 2001, the ASIC may do the same (s93A). C. Private Industry Codes issued by ADMA and DSA – no legal effect, except in	Penal sanctions for certain breaches if the behaviour amounts to harassment and coercion, or breaches any other Part V prohibition.	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	unsolicited sales				so far as there may be membership obligations within the organisation.		
Austria	Unsolicited offers	§864 Abs 2 ABGB	§864 Abs 2 ABGB				
	Door-to-door sale			§3 KSchG			
	Penal rules KSchG					§3 KSchG	
	Penal rules ABGB					(§864 Abs 2 ABGB)	
	Privacy, data security				§§92 <i>et seq.</i> TKG (v.a. §107 TKG), §7, 30 ECG, §§1, 7, 9 DSG	§§108 <i>et seq.</i> TKG, §§51 <i>et seq.</i> DSG	
Belgium		LPC Art.23§3-5 (advertisement), 76 (unsolicited goods), 80 (distant selling)	LPC Art.23(3)(5),53 (advertisement); 76 (unsolicited goods];82 (prior consent in distant selling]	LAA	Act of 11 March, 2003 on some legal aspects of information society services, Arts. 13, 14§1(advertisement by using e-mails]	LPC Art. 102-110;	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Canada		No general law on unsolicited offers; Arts. 1399-1401 C.C.Q. (Quebec); Provincial Sales of Goods Acts (e.g. Alberta, R.S.A. 2000, c.S-2, s.58);	Federal Competition Act Art. 52 (general criminal provision for false or misleading representations); B.C. Consumer Protection Act, R.S.B.C. 1996, c.69, s. 47(3); Newfoundland and Labrador Unsolicited Goods and Credit Cards Act ss.2 and 3; N.S. Consumer Protection Act s. 23; Saskatchewan The Consumer Protection Act s. 73(2); P.E.I. Consumer Protection Act s.17 (unsolicited goods); Ontario Consumer Protection Act 2002 s.14(2)(15).	Alberta Fair Trading Act sis. 20-23 and B.C. Consumer Protection Act s. 54 (negative option selling); New Brunswick Cost of Credit Disclosure Act R.S.N.B. 1973 c.C-28 ss.1,14 (unsolicited credit cards); Quebec Consumer Protection Act, Art. 58 (itinerant merchants); Consumer Protection Acts (Fair Trading Act in Alberta), Direct Sellers Act or Regulation as in N.B., Newfoundland and Labrador, P.E.I., Nova Scotia, Manitoba and Saskatchewan (cooling-off period);	Provincial Office of Consumer Affairs/Competition Bureau (telemarketing); PhoneBusters (anti-fraud call centre operated jointly by the Ontario Provincial Police, the Royal Canadian Mounted Police and the Competition Bureau); Canadian Marketing Service "Do Not Call" Service.	Not addressed in questionnaire responses	Not addressed in questionnaire responses
Czech Republic		Civil Code Secs 34-51a	Civil Code Art.53		Act No 480/2004 Coll., on Certain Services of Information Society Sec.7 (prior assent), 11 (fine is imposed)		
Denmark	The Consumer Contracts (Doorstep Sales Act) 1987		Sections.2 & 6 (prohibit door-to-door sale)				
	The Market Practice Act		Sec.6a (unsolicited communication with specific customers); for remedies, Sec. 13; for class action, Sec. 20				
Finland			Consumer Protection Act		(Market Court; Consumer Ombudsman)	Injunction	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
France	Door-to-door sales		Art. L121-21, Art. L. 121-23, Art. L. 121-25 of the Consumer Code			Art. L. 121-28 of the Consumer Code	
	Advertising via electronic mail		Art. L. 121-15-1 and L121-15-3 of the Consumer Code				
	Selling by phone or other similar means		Art. L. 121-18 and Art. R 121-1 of the Consumer Code, Art. L121-27 of the Consumer Code, Arts. L. 121-18, L. 121-19, L. 121-20, L. 121-20-1 and L. 121-20-3 of the Consumer Code				
	Abuse of weakness		Arts. L 122-8 and following of the Consumer Code				
	abuse of the state of ignorance or of weakness					Art. L. 223-15-2 of the Penal Code	
	financial door-to-door sales			Art. L341-11 and Art. L353-1 of the the Monetary and Financial Code, Law n° 2003-706 of 1.08.2003			
Germany	Civil Code	Sec. 119 ff. BGB (mistake), Sec. 123 BGB (fraud or threat), Sec. 134 BGB (breach of law), Sec. 138 BGB (<i>bonos mores</i> / against public policy), Sec. 241 (2) BGB (duty to protect the other's party interest), Sec. 242 BGB (good faith), Sec. 311 (2) BGB (<i>culpa in contrahendo</i>)	Sec.241 a BGB (unsolicited goods)	Sec. 312 ff. BGB (door-to-door sales), Sec. 661a BGB (prize notifications)			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Unfair Competition Act				Sec. 7 UWG (unreasonable harassment) [→ Sec. 3 UWG (general clause)], Sec. 8 UWG (injunction), Sec. 9 UWG (damages), Sec. 10 UWG (skimming off of profits)		
	Prohibitory Injunctions Act				Sec. 2 UKlaG (injunction)		
Hungary				Act CVIII. 2001 on certain aspects of the electronic commercial services and services related to information society(Sec.14)	Act CVIII. 2001 on certain aspects of the electronic commercial services and services related to information society		
Iceland	1) Fairly comprehensive protections in relation to door-to-door and distance selling including e-mail, with 14 day withdrawal rights.		(1) Act on Door-to-Door Sales and Distance Contracts [No 6/2000] (Art. 5), (Art. 6), (Art. 8), (Art. 13), (Art. 14)				
Italy			Consumer Code Art. 2 (fundamental rights of consumer)	Consumer Code Art. 58 (distant contracts); Consumer Code Art. 68 (electronic commerce); Decreto legislativo 30 giugno 2003, n196 Sec.130 (personal data protection)			

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Japan	Civil Code					Art.709 (Torts)	
	Consumer Contract Act	Art.4 (3) (Causing Annoyance by Not Leaving Consumer's Place or Confining a Consumer)					
	Specified Commercial Transaction Act			Art.2 (1) No.1 (Door-to-door sales) Art.2 (1) No.2 (confidence game, appointment sales) Art.2 (3) (Telemarketing)	Door-to-door sales; Art.6 (3), 6 (4) (Content of discipline) Art.8 (Content of Supervision) Art.34 (3), (4) (chain sales) Art.44 (3) (specific continuous service) Art.52 (2), (3) (sales through attraction by hinting business ties) Telemarketing; Art.17, 21 (3) (Content of discipline) Art.22, 23 (Content of Supervision) Art.66 (6) Art.67 ←Competent minister; Minister of Economy, Trade and Industry and others Art.68 ←Prefectural governors Art.69 ←Directors of regional bureaus	Art.70 (← Art.6 (3), 8 (1), 21 (3), 23 (1) Art.71 (← Art.6 (4) Art.72 (← Art.22) Art.72 No.8, 73 No.2, No.3 (← Art.66 (6)	

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Financial Futures Trading Act				Art.76 No.4, No.5 (Content of discipline) Art.86, 87 (1) No.3 (Content of Supervision) ←Prime minister, Minister of finance	Art. 151 and down (← Art.85, 86, 87)	
	Mortgage Business Regulation Act				Art.19 (2) (Content of discipline) Art.23, 24 (Content of Supervision) ←Regional Financial Bureaus, Ministry of Finance, the prime minister	Art. 49 (← Art.24)	
	Commodity Exchange Act				Art.214 No.5, No.6 No.7 (Content of discipline) Art.231, 232, 236 (Content of Supervision) ←Minister of Agriculture, Forestry and Fishery, Minister of Economy, Trade and Industry	Art. 361, 362 (← Art.231, 232, 236)	
	Financial Instruments Sales Act				Art.7 (Ensuring of Fair Soliciting), Art.8 (Formulation and Announcement of Soliciting Policies)	Art. 9 (← Art.8)	Art.7

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	“Comprehensive Supervising Guideline for Financial Futures Brokers” based on the Financial Futures Trading Act (the Financial Services Agency)				II-3-7 (Prohibition of Uninvited Soliciting) II-3-9 (Soliciting by Gathering Clients)		
Korea	Door-to-Door Sales Act; Promotion of Information & Communication Network Utilization and Information Protection Act; Consumer Protection in Electronic Commerce Act; Door-To-Door Sales Act; Credit-Specialized Financial Business Act; Insurance Business Act	N/A	Art. 3 of the Fair Labelling and Advertising Act (Prohibition of Unfair labelling and Advertising)→Art. 10 of the Act (Liability of Damages)	Art. 14 of the Securities And Exchange Act (Liabilities for Compensation Due to False Statements= Collective Lawsuits are available), Art.45 of the Futures Trading Act (Presenting a Conclusive Judgement→Liability for Damages)	Art. 21 of the Consumer Protection in Electronic Commerce Act, Art. 11 of the Door-to-Door Sales Act, Art. 14 of the Instalment Transactions Act, Art. 97 of the Insurance Business Act, Art. 52 of the Securities And Exchange Act, Art. 57 of the Operating Indirect Investment and Assets Businesses Act, Art. 45 of the Futures Trading Act, Art. 33 of the Business of Licensed Real Estate Agent Act, etc.	Art. 17 of the Fair Labelling and Advertising Act, Art. 43 of the Consumer Protection in Electronic Commerce Act, Art. 52 etc. of the Door-to-Door Sales Act, Art. 182 etc. of the Operating Indirect Investment and Assets Businesses Act, Art. 96 etc. of the Futures Trading Act, Art. 49 of the Business of Licensed Real Estate Agent Act	N/A
Mexico		Federal Civil Law Art. 1795 (validity of contracts/consent)	Federal Consumer Protection Law Arts. 1,46,64-66,99		Secretariat of Economy (insurance) Office of the Federal Attorney for Consumer Protection (enforcement)	Fine (FLPC Arts. 126, 127)	
Netherlands	(1) Abuse of the Circumstances 2) Telemarketing		(1) Art. 44 of Book 3 of the Civil Code	(2) <i>Telecommunicatiewet</i> (Telecommunication Act)			

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
New Zealand	(1) Common law, (2) legislation			(2) Unsolicited Goods and Services Act; (2) Door to Door Sales Act	(2) Unsolicited Goods and Services Act; (2) Door to Door Sales Act	(2) Unsolicited Goods and Services Act ss 11-12 (offences); (2) Door to Door Sales Act s14 (offences, e.g. vendor fails to repay money after notification by consumer)	
Norway		The Act relating to conclusion of agreements etc.; Sec. 33, Sec. 36.	The Cooling-off Period Act; (remedy; the right to cancel, the ordinary cooling-off period; 14 days)		The MCA; Sec. 1 (general provision), Sec. 2a (negative sales) and Sec. 2b (restriction on the use of certain methods of communication)	The MCA; Sec. 16 and 17 (injunctions combined with fines, imprisonment of up to 6 months)	
Poland	(1) Doorstep selling (2) Distance selling (3) E-commerce (4) "Arduous or pressing circumstances"		(1) & (2) Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product 3) Act on Providing Services by Electronic Means 4) Act on combating unfair competition – Art. 16.1(5)		See relevant entry in Section 1 for enforcement of "Information Obligations"		
Slovak Republic	Information on specific provisions not supplied so entries are generally descriptive only		Door Sales: 7 day withdrawal	Timeshares: 10 day withdrawal			
Spain	Contracts formed outside commercial establishments, door-to-door sales, sales at the workplace of the consumer or in public transport		Art. 3 of the Law 26/1991, 21 November				

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	Commercial communications and promotional offers made through electronic means			Arts. 19 and following of the LSSI			
	Distance sales			Arts. 32, 40, 41 and 42 of the Law 7/1996 on retail trade			
Sweden	(1) The "excursion rule" protection for contracts concluded away from business premises (2) Timeshare Contracts (3) Bad Marketing Practices		(1) The Distance and Doorstep Sale Act (2005:59), Chapter 1 Section 2, Chapter 2, Section 9, Chapter 4, Section 5, 14-day right of withdrawal (3) Marketing Act (1995:450) – Sections 3, 14, 19	(2) Timeshare Act (1997:218) Section 12 – 10 day right of withdrawal may be extended to 3 months	(3) <i>Finansinspektionen</i> issues codes and guidelines for different areas of financial activity (securities, investments, insurance).		
Switzerland		LCD Arts.2, 3(h) and 3(o);	CO Art.40a (Door-to-door sales: 7 day revocation)				(LCD): intentional violation: imprisonment or fine up to CHF 100 000 (LCD Art. 23)
United Kingdom	(1) Private law rules regarding contracts concluded under duress (2) Protection from Harassment Act 1997 (3) Wide range of statutory provisions (mainly regulatory) in specific areas	(1) Court has power in private law to cancel contracts concluded under duress.		(3) Consumer Credit Act (s49); Financial Services and Markets Act 2000; Data Protection Act 1998	(3) Consumer Protection Regulations 1987 No. 2117; PECR 2003; ECDR 2002/2013; Consumer Credit Act 1974, s49; E-Commerce (EC Directive) Regulations 2002 (No 2013); Consumer Protection (Distance Selling) Regulations 2000 (No 2334); Financial Services and Markets Act 2000 – Rules made hereunder: COB 3.5.5,	(2) Protection from Harassment Act 1997 – OFT has jurisdiction under Part 8 of the Enterprise Act 2000. Both penal and civil law sanctions may apply, and injunctions to stop the conduct in breach. 3) Various criminal penalties.	

DSTI/CP(2006)8/FINAL

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
					COB 3.10.3.		
United States		No general law on unsolicited offers	No general law on unsolicited offers	Telemarketing Sales Act (unsolicited telemarketing activities), CAN-SPAM Act, 15 U.S.C. §7701 (unsolicited commercial e-mail), Telephone Consumer Protection Act, 47 U.S.C. §227 (unsolicited faxes)	16. C.F.C. 310.4 (creation and enforcement of a national do-not-call registry), 16 C.F.R. §429.1 (unsolicited door-to-door sale)	The CAN-SPAM Act gives the Department of Justice (DOJ) the authority to enforce its criminal sanctions.	Not addressed in questionnaire responses
European Commission	Directive 2005/29/EC; Art. 8 and Annex I			Council Directive 85/577/EEC; Art.1 (1); Directive 97/7/EC; Art. 10 (1) and Art. 10 (2); Directive 2000/31/EC; Art. 7 (1); Directive 2002/58/EC; Art. 13 (1); Directive 2002/65/EC; Art. 10 (2)	Directive 97/66/EC; Art. 12 (1) and Art. 12 (2) (telecommunication sector)		

4) Misrepresentation

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Australia	(1) General Protections 2) <i>Consumer Protection</i> Misleading and deceptive conduct (range of specific measures in Part V TPA 1974 – ss53-59) (3) Remedies under TPA (4) <i>Financial Products and Services</i> - range of specific provisions	(1) The common law protections against fraud and misrepresentation, both civil and criminal, are always available for serious cases, as are the TPA provisions.	(2) <i>Consumer Protection</i> TPA 1974 – Part V Division 1: ss 52-53C; 55; 55A; 59 3) Remedies under TPA, as well as the common law protections.	(4) <i>Financial Products and Services</i> provisions under ASICA 2001 mirror TPA: ss12DA-12DD, 12 DF, 12GD, 12GM, 12GN and 12 GF	In TPA 1974, ACCC has authority to accept, amongst other things, undertakings from an offender (s. 87B). ASICA 2001 has a similar framework (s. 93A) for ASIC.	Penal sanctions for certain breaches, and for certain conduct at common law.	
Austria	Fraud	§870 ABGB	§870 ABGB				
	Mistake	§§871 <i>et seq.</i> ABGB	§§871 <i>et seq.</i> ABGB				
	Against public policy / breach of law	§879 ABGB	§879 ABGB				
	General right of withdrawal regarding mistake		§3a KSchG				
	Penal rules ABGB					§§872 <i>et seq.</i> ABGB, §877 ABGB, §§1293 <i>et seq.</i> ABGB	
	Penal rules StGB					§§146 <i>et seq.</i> StGB, §150 StGB, §166 StGB, §20 f StGB	
	Penal rules KSchG					§3a KSchG	
Belgium		N/A	LPC Art. 22-29 (Misleading Advertising)	LAA	Act of 11 March, 2003 on some legal aspects of information society services, Arts. 7 and 13	LPC, Art. 102-110 (fine)	

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Canada		The federal Competition Act Arts. 74.01 and 74.02 (misrepresentations to the public); provincial Sale of Goods acts (e.g. Alberta Fair Trading Act, R.S.A. 2000, c.S-2, s.58; Trade Practice Act (B.C.); The Business Practices Act and The Trade Practices Inquiry Act (Manitoba); Arts. 1399-1401 C.C.Q (Quebec).	Provincial <i>Sale of Goods Acts</i> (e.g. Quebec Consumer Protection Act, Title II, Arts. 219-235; Ontario Consumer Protection Act, S.O. 2002, c.30 Sch. A., Art. 116(5); Alberta Fair Trading Act R.S.A. 2000 c.F-1.05 ss. 5-19, 186.187 and Unconscionable Transactions Act R.S.A.2000, c.U-2; Unconscionable Transactions Relief Act (N.B.); Consumer Protection Act (Quebec and Saskatchewan); New Brunswick's Consumer Product Warranty and Liability Act (S.N.B. 1978, c. C-18.1).	Ontario CPA 2002, s.14 (2)13 (sale of residential land).	The federal <i>Competition Act</i> Arts. 74.09 <i>et seq.</i> (deceptive marketing practices); Executive Council Act; Ministry of Consumer and Business Services Act.	Federal Competition Act s.52, a false or misleading representation in a material respect, made to the public, constitutes a criminal offence when it is made knowingly or recklessly. Liability on conviction on indictment includes a fine in an amount at the discretion of the court, a term of imprisonment not to exceed five years, or both. On summary conviction, a fine does not exceed CAD 200 000 (around USD 176 000), imprisonment for a term not to exceed one year, or both; Ontario Consumer Protection Act (S.O. 2002, c.30 Sch. A., Art. 116 (5), the punishment for failure to comply by an individual includes a fine up to CAD 50 000 (around USD 44 000), a term of imprisonment not to exceed two years less a day, or both.	Not addressed in questionnaire responses.

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
Czech Republic		Civil Code 499- (Liability for defects), secs 34-51a, 49a			Consumer Protection Act, Sec. 2 (1), 7 (2), 8 (1), 10 (3,4,5 (prohibition of removing marks), 8 (obligation of explanation of symbols),12 (2) (misleading pricing), 3, 8 (1) (prohibition of deceiving consumers)	Fine; on-the-spot fine (CPA, Sec. 24(1); Injunction (CPA, Sec. 23a)	
Denmark	The Marketing Practices Act		Sec. 2 (misrepresentation, etc.); for right to sue, Sec. 13; for class action, Sec.20				
Denmark	The Sales of Goods Act		Sec. 76 (1)(i)				
Finland		Unfair Business Practices Act	Consumer Protection Act		(Market Court; Consumer Ombudsman)	Injunction (CPA Ch.2 Sec.7)	See CPA Chap 11 (Penal Prov.)
France	Mistake, misrepresentation or violence	Arts. 1109 to 1117 of the Civil Code					

Country	Law/regulation	Private law rule			Administrative regulation rule (specific sector)	Penal rule	Admonition/duty to make effort rule
		General contract	General consumer contract	Specific type of contract			
	False, misleading and fraudulent advertising	Damages			Action of the <i>Direction générale de la Concurrence, Consommation et Répression des Fraudes</i> : Art. L. 113-3 of the Consumer Code on prices display, Art. L. 121-1 of the Consumer Code on false or misleading advertising, Order of 3 December on prices, Order 77-105/P of 2 1977 on prices display (discounts) and Art. L. 310-3 of the Code of Commerce as to sales. Other qualified authorities listed in Art. L. 215-1 of the Consumer Code	Arts. L. 421-1 and following of the Consumer Code (right of action of Associations of consumers)	
	False or misleading advertising		Art. L. 121-1, Art. L121-6 and Art. L. 213- of the Consumer Code				
	Fraudulent advertising		Art. L213-1, Art. 216-1 of the Consumer Code, the Law of 21 May 1836 on the prohibition of lotteries, Arts. L. 121-36 and following of the Consumer Code, Art. L. 121-1 of the Consumer Code, Ordinance of 1 September 2005				

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Germany	Civil Code	Sec. 119 ff. BGB (mistake), Sec. 123 BGB (fraud or threat), Sec. 134 BGB (breach of law), Sec. 138 BGB (<i>bonos mores</i> / against public policy), Sec. 241 (2) BGB (duty to protect the other party's interest), Sec. 242 BGB (good faith), Sec. 305 ff. BGB (standard terms of contract), Sec. 311 (2) BGB (<i>Culpa in contrahendo</i>)	Sec. 355 BGB (right of withdrawal)	Sec. 312 ff. BGB (door-to-door sales), Sec. 312c BGB (distance selling) (→ Sec. 1 BGB-InfoV), Sec. 312d BGB (right of withdrawal), Sec. 312e BGB (e-commerce) (→ Sec. 3 BGB-InfoV) Sec. 433 ff. with Sec. 474 BGB (consumer sales contract), Sec. 481 ff. BGB (time sharing) (→ Sec. 2 BGB-InfoV), Sec. 492 ff. and 505 ff. BGB (consumer credit), Sec. 651a BGB (package travel) (→ Sec. 4-11 BGB-InfoV)			
	Unfair Competition Act				Sec. 4 (4) UWG (advertising with a reduced price), Sec. 4 (5) UWG (organising prize drawings), Sec. 5 UWG (misleading advertising) (→ Sec. 3 UWG (general clause), Sec. 8 UWG (injunction), Sec. 9 UWG (damages), Sec. 10 UWG (skimming off of profits)		
	Prohibitory Injunctions Act				Sec. 2 UKlaG (injunction)		
	Criminal Code					Sec. 263 (1) StGB (fraud)	

DSTI/CP(2006)8/FINAL

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Hungary			Act CLV. 1997. on consumer protection Act LVII. 1996. on the prohibition of unfair trading practices and unfair competition (Competition Act) secs. 8-10)	7/2001.(III.29.) Decree of the Ministry of Economy on the indication of the prices of products and services offered to consumers			
Iceland	(1) General case law 2) Advertising (3) Financial Status	(1) General case law where remedies have been given for misrepresentation	(2) the Competition Law [No 8/1993] (Art. 21). (3) Act on Financial Undertakings [No. 161/2002] (Art. 106)				
Italy		Civil Code Art. 2598 (unfair competition re: Advertising)	Consumer Code Art. 2 (fundamental rights of consumer)	Consumer Code Art. 19-27 (misleading advertising); Consumer Code Art. 82-93 (package travel)			
Japan	Civil Code	Art.96					
	Consumer Contract Act		Art.4 (1) especially, No.1				
	Securities Exchange Act				Art.42 (1) No.1-No.4 (Content of discipline) ←Prime Minister, Minister of Finance		
	Financial Futures Trading Act				Art.76 No.1 (Content of discipline) Art.85, 86, 87 (Content of Supervision) ←The Prime Minister and Minister of Finance	Art. 151 and down (← Art.85, 86, 87)	

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	Premiums and Representations Act				Art.4 (Prohibition of misleading representations) Art.6 (Cease and desist order) ← The Fair Trade Commission of Japan		
	Commodity Exchange Act				Art.214.No.1, No.9 (Content of discipline) Art.231, 232, 236 (Content of Supervision) ← The minister of agriculture, forestry and fishery, minister of economy, trade and industry	Art. 361, 362 (← Art.231, 232, 236)	
	Specified Commercial Transaction Act			Art.2 (1) No.1 (Door-to-door sales) Art.2 (1) No.2 (confidence game, appointment sales) Art.2 (3) (Telemarketing) Art.9-2 Art.33 (chain sales) Art.41 (specific continuous service) Art.51 (sales through attraction by hinting business ties)	Door-to-door sales; Art.6 (1)(Content of discipline) Art.7 (← Art.3-Art.6)Art.8 (← Art.6-2) (Content of Supervision) Art.21 (1)Art.34Art.44 (1)Art.52 (1) Art.67 ←Competent minister; Minister of Economy, Trade and Industry and others Art.68 ←Prefectural governors Art.69 ←Directors of regional bureaus		

DSTI/CP(2006)8/FINAL

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	“Comprehensive Supervising Guideline for Financial Futures Brokers” based on the Financial Futures Trading Act (the Financial Services Agency)				II-3-10 (Implementation of accountability to customers)		
Korea	Door-to-Door Sales Act	N/A	N/A	Art. 8 of the Door-to-Door Sales Act (Door-to-Door Sales, Telephone-Based Solicitation Sales = Cooling Off)	Art. 50 of the Promotion of Information & Communication Network Utilization and Information Protection Act, Art. 24-2 of the Consumer Protection in Electronic Commerce Act, Art. 6 of the Door-To-Door Sales Act, Art. 14 of the Credit-Specialized Financial Business Act, Art.96 of the Insurance Business Act, etc.	Art. 56 of the Door-to-Door Sales Act (Presenting a false name, etc. when visiting or calling on the telephone)	N/A
Mexico		Federal Civil Law Art. 1795 (validity of contracts/consent)	Federal Consumer Protection Law Art.1, 76 bis	Metrology and Standardization Federal Law (technical standards)	Secretary of Economy (insurance) Office of the Federal Attorney for Consumer Protection (FCPL Arts. 3, 19)	General rule (PLPC125) fine (FLPC Art.127: in case of violation of Art.32-34 & 66; Art.126 in case of violation of Art.1)	
Netherlands	(1) Misleading publicity generally (2) Door-to-Door Sales advertisements	(1) Arts. 194-196 of Book 6 of the Civil Code		(2) <i>Colportagewet</i> [Door-to-Door Sales Act: 16/11/1995 (Stb. 574)]			

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New Zealand	(1) Common law, (2) Legislation	(1) misrepresentation; (2) Contractual Remedies Act	(2) Fair Trading Act s9 (misleading conduct in trade)	(2) Securities Act s55B(a) (civil liability if ad or prospectus contains "untrue statement")		(2) Securities Act s58 (offences for untrue statements)	
Norway		The Act relating to conclusion of agreements etc.; Sec. 33, Sec. 36.		The Act on Sale of real property; Sec. 3-8 (the information has influenced the entering of the contract), Sec.3-10 (the buyer had knowledge, or should have had knowledge, about the correct facts) (remedy: detainment of contractual payment, claim for repair of the defect or a price reduction, termination of the contract and claim for damages, etc.)	The MCA; Sec. 2 (misleading business methods), Sec. 3 (insufficient guidance etc.)	The MCA; Sec. 16 and 17 (injunctions combined with fines, imprisonment of up to 6 months)	
Poland	(1) General protections (2) Misleading Information	(1) Civil Code. Book I, Title IV Legal activities (Arts. 82-88) Book III, Title VI Prohibited acts (Art. 415)	(2) Act on combating unfair competition – Arts. 3, 5, 6, 8, 10, 14, 16, 17		See relevant entry in Section 1 for enforcement of "Information Obligations"		
Slovak Republic	Refer to Section 1						
Spain	Mistake, fraudulent misrepresentation, intimidation or violence	Arts. 1265 and following of the Civil Code					
	Legislation on advertising		Arts. 4, 8, 13, 14, 21, 27 34, 39 and 41 of the LGDCU				

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			General Law 34/1988, of 11 November, on advertisement				
				Order of 12 December and the Circular 8/1990 of the <i>Banco de España</i> (advertising of financial offers)			
				Art. 17 of the Law 7/1995, 23 March, on consumer credit (advertising of credit offers)			
Sweden	(1) Correct descriptions (2) Deceit (3) Real Property (4) Bad Marketing Practices	(2) Contracts Act (1915:218), s30 (deceit), s33 (good faith)	(4) Marketing Act (1995:450) – Sections 4 to 11, 14, 19, 32; Consumer Contracts Act (1994:1512)	(3) Land Code (1970:994); Financial Advisory Services to Consumers Act (SFS 2003:862) – sufficient care under s5 might include duty not to misrepresent.	(4) <i>Finansinspektionen</i> issues codes and guidelines for different areas of financial activity (securities, investments, insurance).		
Switzerland		CO (Arts. 23 and 28 Contracts not binding in error and fraud); LCD (Arts. 3(a),(b),(f),(i),(m) and 8)				(LCD): intentional violation: imprisonment or fine up to CHF 100 000 (LCD Art. 23)	
United Kingdom	(1) Misrepresentation Act 1967 2) General Consumer protections(3) Legislation and Regulations in specific areas	(1) Misrepresentation Act 1967 s2. Remedies include damages and recession.	(2) Trade Descriptions Act 1968	(3) Property Misdescriptions Act 1991	(3) Package Travel, Package Holidays and Package Tours Regulation 1992 SI 1992/3288; Control of Misleading Advertisement Regulations 1988 (No. 916)	(2) & (3) Trade misdescription provisions may carry penal sanctions	

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United States		Laws of various states as generally explained in Restatement (Second) applies (<i>i.e.</i> Restatement (2d) of Contracts §159 <i>et seq.</i> , Restatement (2d) of Torts 525 <i>et seq.</i> , etc.)	Laws of various states as generally explained in Restatement (Second) applies (<i>i.e.</i> Restatement (2d) of Contracts §159 <i>et seq.</i> , Restatement (2d) of Torts 525 <i>et seq.</i> , etc.)	The Securities Exchange Act, 15 U.S.C. §78 <i>et seq.</i> (misrepresentation/fraud relating to securities transactions)	SEC Rule 10b-5 (misleading and untrue statements)	Not addressed in questionnaire responses	Not addressed in questionnaire responses
European Commission	Directive 2005/29/EC; Art. 6 (1)		Directive 93/13/EEC (unfair contract terms)	Directive 1999/44/EC; Art. 2 (2)-(d) – consumer sales of goods Directive 90/314/EEC; Art. 3 (1) (any descriptive matter concerning a package and supplied by the organiser or the retailer to the consumer etc. must not contain any misleading information)			