

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i>	758
	D. Information duties	

D. Information duties

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I. Introduction

One aspect common to several of the Directives within the focus of this study is the requirement to provide information to a consumer, either before a contract is concluded, or immediately afterwards. In some instances, information has to be provided both before *and* after the conclusion of a contract. In this part of the study, we examine the current extent of these information duties, and consider whether there is room for improvement.

The first section of this part will outline the existing information obligations in all the directives under consideration. The second section will then turn to the particular issues that arise from the current state of these duties, and will consider possible suggestions for improvement. This aspect is now firmly tied into the development of the *Common Frame of Reference* on European contract law, and any suggestions we make here need to be set in the context of the CFR.

II. Existing information obligations in the 8 directives

1. Doorstep Selling Directive

This Directive imposes only a very basic information requirement, but the jurisprudence of ECJ has revealed that the consequences of non-compliance can be rather complicated. Under Article 4(1), a consumer must be given information about his right to withdraw from a contract concluded in the circumstances to which the Directive applies within a period of no less than 7 days from concluding the contract, as well as the name and address of the person against who this right may be exercised.

This information must be given in writing. No further requirement, such as the quality of the language used in providing this information, or the clarity of the information, is imposed.

There is no provision in this Directive regarding the sanctions that might be attached to a failure by a trader to give the consumer this information. Case-law before the ECJ has established that one consequence is that the period for extending the right of withdrawal is extended indefinitely, i.e., the seven-day 'withdrawal period' will not commence until the consumer has been informed adequately.

The position regarding sanctions in the member states is therefore rather diffuse. In BELGIUM, failure to provide this information results in the nullity of the contract.¹ This is also the case e.g., in HUNGARY,² LUXEMBOURG,³ MALTA,⁴ the NETHERLANDS,⁵ and SPAIN.⁶ The same may happen in GREECE under generally applicable rules. In the UNITED KINGDOM, it is clarified that the contract remains enforceable by the consumer against the trader, but not by the trader against the consumer,⁷ although the position will be similar in the other countries mentioned.

In IRELAND, a criminal penalty is imposed for failing to comply with this information obligation.⁸ SLOVENIA also imposes criminal liability.⁹ The United Kingdom also provides for a detailed system of criminal penalties in addition to the sanction of non-enforceability against the consumer.¹⁰ BULGARIAN¹¹ and ROMANIAN¹² law also stipulate a fine for contravention of the information duty.

¹ Article 88, sent. 3 of the Law on Trade Practices and Consumer Information.

² Article 3(3) of the Government Decree on Doorstep Selling.

³ Article 10(1) of the Doorstep Selling Act.

⁴ Article 7 of the Doorstep Contracts Act.

⁵ Article 24(1) of the Doorstep Selling Act.

⁶ Article 4 of the Law 26/1991 of November 21, on consumers' protection in case of contracts executed out of the commercial premises.

⁷ Regulation 4 Consumer Protection (Cancellation of Contracts concluded away from business premises) Regulations 1987.

⁸ Regulation 4(4)-(6) European Communities (Cancellation of Contracts negotiated away from business premises) Regulations, 1989.

⁹ Article 77(1) no. 24, (2) of the Consumer Protection Act.

¹⁰ Regulation 4A-4H Consumer Protection (Cancellation of Contracts concluded away from business premises) Regulations 1987.

¹¹ Article 204 of the Law on Consumer Protection.

¹² Article 18 of the Ordinance regarding consumer contracts negotiated away from business premises (106/30.08.99).

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> D. Information duties	760
--------------------------------	---	------------

In ITALY, if this information is not supplied (or supplied incorrectly), the period for exercising the right to withdrawal is extended to 60 days from the conclusion of the contract (for contract of services) or from the delivery of goods,¹³ whereas in LITHUANIA, the period is 3 months from the date of concluding the contract.¹⁴

2. Directive 90/314/EEC (Package Travel)

This Directive requires that information is provided to a consumer at 4 different stages, and the type of information required varies accordingly.

The first stage is where a brochure about a package holiday is given to a consumer. The Directive states that such a brochure must contain information about the following aspects of the holiday:¹⁵

- (i) the price;
- (ii) adequate information concerning:
 - (i) destination and means, characteristics and categories of transport used;
 - (ii) type of accommodation, its location, category or degree of comfort and its main features; its approval and tourist classification under the rules of the host Member State concerned;
- (iii) the meal plan;
- (iv) the itinerary;
- (v) general information on passport and visa requirements for nationals of the member state or states concerned and health formalities required for the journey and the stay;
- (vi) either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance;

¹³ Article 65(3) of the Consumer Code.

¹⁴ Article 8, sent. 3 of the Order of the Minister of Economy of the Republic of Lithuania on the Approval of the Rules of Sale of Goods and Provision of Services in Premises not Designated for this Activity.

¹⁵ Article 3(2).

- (vii) whether a minimum number of persons is required for the package to take place and if so, the deadline for informing the consumer in the event of cancellation.

This information has to be included in the brochure. This term is not defined, but it seems likely that the intention was to refer to a written document. Consequently, it is implicit that the information listed above must be provided in writing. In addition, Art.3(1) requires that this information must not be misleading.

It is also not entirely clear if information about package holidays displayed on a website would be a 'brochure'. If this were not so, then these particular information obligations might not apply, although it would then have to be considered to what extent the obligations in the Directive 97/7 might require the provision of the equivalent items of information under its provisions.

The second stage at which information has to be provided is at a point before the contract is concluded. Art. 4(1) lit. (a) states that the consumer has to be provided with information about (i) passport and visa requirements applicable to nationals of the member state(s) concerned, in particular on the periods for obtaining these; and (ii) information on the health formalities required both for the journey and the stay. This information must be provided 'in writing or any other appropriate form'.

The third stage is the period 'in good time before the start of the journey',¹⁶ which, presumably, means that a contract has already been concluded. Here, the consumer must be given information – again 'in writing or any other appropriate form' about the following:¹⁷

- (i) Times/places of intermediate stops and transport connections;
- (ii) Details of the travel accommodation ('place to be occupied by the traveller'), such as the cabin/berth on a ship or sleeper compartment on a train;
- (iii) Name/address/telephone number of organiser's and/or retailer's local representative; alternatively, of local agencies who could assist the consumer

¹⁶ Article 4(1)(b).

¹⁷ Article 4(1)(b).

in cases of difficulty. If none of these is available, the consumer must be given an emergency contact number for the organiser/retailer.

- (iv) Where journeys/stays abroad by minors: information enabling contact with the child/person responsible for the child;
- (v) Optional insurance policy to cover the cost of cancellation by the consumer; or of assistance, including repatriation, in the event of accident/illness.

The fourth, and final, stage at which the Directive mandates the provision of specific information to the consumer is in the contract document itself. Article 4(2) lit. (a) requires that the contract includes at least all the items listed in the Annex to the Directive, which are:

- (a) the travel destination(s), and, where periods of stay are involved, the relevant periods with dates;
- (b) the means, characteristics and categories of transport to be used, the dates, times and points of departure and return;
- (c) where the package includes accommodation, its location, its tourist category or degree of comfort, its main features, its compliance with the rules of the host member state concerned and the meal plan;
- (d) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;
- (e) the itinerary;
- (f) visits, excursions or other services which are included in the total price agreed for the package;
- (g) the name and address of the organiser, the retailer, and, where appropriate, the insurer;
- (h) the price of the package, an indication of the possibility of price revision under Article 4(4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at airports, tourist taxes) where such costs are not included in the package;
- (i) the payment schedule and method of payment;
- (j) special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which have been accepted;

- (k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract.

The terms of the contract must be in writing, or ‘in such other form as is comprehensible and accessible to the consumer’. All the information also has to be ‘communicated’ to the consumer before the conclusion of the contract, which does not seem to require that the consumer is given this information in writing before the contract is concluded. Article 4(2) lit. (b) goes on to say that the consumer must be given a copy of these terms.

The table on the next page seeks to indicate how the various items of information that may have to be provided in the course of concluding a contract for a package holiday are distributed across the 4 stages mentioned above. It will be seen from this that despite the rather extensive list of items, there is only a limited amount of duplication. The only noticeable duplication arises where a consumer is given a brochure and subsequently books a contract based on that brochure. However, in circumstances where a consumer does not rely on a brochure, there will be almost no duplication at all.

D. Information duties

Item of information	Brochure ¹⁸	Before contract ¹⁹	Before journey ²⁰	Contract ²¹
Price	✓			✓ (including information about price revision)
Indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at airports, tourist taxes) where such costs are not included in the package				✓

¹⁸ It is assumed that the information here must be given in writing.

¹⁹ This information has to be given in writing or any other appropriate form.

²⁰ In writing or any other appropriate form

²¹ In writing or such other form as is comprehensible and accessible to the consumer.

D. Information duties

Item of information	Brochure ¹⁸	Before contract ¹⁹	Before journey ²⁰	Contract ²¹
Destination and means, characteristics and categories of transport used	✓		✓ (times/places of intermediate stops and transport connections and details of place to be occupied by traveller)	
Type of accommodation, its location, category or degree of comfort and its main features; its approval and tourist classification under the rules of the host member state concerned	✓			✓
Meal plan	✓			✓
Itinerary	✓			✓
General information on passport and visa requirements for nationals of the member state or states concerned	✓	✓		

D. Information duties

Item of information	Brochure ¹⁸	Before contract ¹⁹	Before journey ²⁰	Contract ²¹
Health formalities required for the journey and the stay	✓	✓		
Either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance / payment plan	✓			✓ (payment schedule and method of payment)
Whether a minimum number of persons is required for the package to take place and if so, the deadline for informing the consumer in the event of cancellation	✓			✓
Name and address of the organiser, the retailer, and, where appropriate, the insurer				✓
Name/address/telephone number of organiser's and/or retailer's local representative; alternatively, of local agencies who could assist the consumer in cases of difficulty. If none of these is available, the consumer must be given an emergency contact number for the organiser/retailer			✓	

D. Information duties

Item of information	Brochure ¹⁸	Before contract ¹⁹	Before journey ²⁰	Contract ²¹
Where journeys/stays abroad by minors: information enabling contact with the child/person responsible for the child			✓	
Optional insurance policy to cover the cost of cancellation by the consumer; or of assistance, including repatriation, in the event of accident/illness			✓	
Visits, excursions or other services which are included in the total price agreed for the package				✓
Special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which have been accepted				✓
Periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract				✓

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> D. Information duties	768
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3. Unfair Contract Terms Directive

This Directive does not mandate that any particular information is given to a consumer. It may be that the requirement that a term is not contrary to ‘good faith’²² embodies the obligation to disclose particularly onerous terms to the consumer before a contract is concluded. This is possibly reinforced by one of the indicative terms in the Annex: term (i) states that a term which binds a consumer to all the terms of in the contract without having had an opportunity to become acquainted with them before the conclusion of the contract is potentially unfair. This, in turn, suggests that adequate transparency regarding the terms of a contract before its conclusion would reduce the likelihood of a particular term being found to be unfair subsequently. The Directive also imposes a form requirement in that all written contract terms must be in ‘plain and intelligible language’.²³

4. Timeshare Directive

The Directive 94/47 contains an extensive catalogue of items of information which must be disclosed to a consumer at two stages in the process of acquiring a property on a time-share basis: (i) when information about a property is requested; and (ii) when the contract is drawn up. The Annex to the Directive contains a minimum list of information that must be provided to a consumer. The table below illustrates when these items are to be provided.

There is no requirement in this Directive that the information must be given in any particular form; crucially, there is no mention of information having to be in plain and intelligible language. A consumer who requests information about a timeshare property under Article 3(1) is entitled to receive ‘brief and accurate’ information. The contract for the acquisition of a timeshare right has to be in the language of the member state where the purchaser resides or of which he is a national. Also, the relevant information, both at the time of enquiring and in the contract itself, must be written – but there is no mention of alternative forms such as a ‘durable medium’.

²² Article 3(1).

²³ Article 5.

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> D. Information duties	769
--------------------------------	---	------------

The Directive 94/47 contains a sanction for circumstances where some of the required information is not given. Thus, Article 5(1) permits an extension of the withdrawal period to up to 3 months from conclusion of the contract where the items listed in that article are not provided. The final column in the table identifies the items of information which must be provided to avoid triggering the extension of the withdrawal period under Article 5(1). Where there is an omission to provide any other item of information required under Articles 3 and/or 4, no specific sanction is envisaged in the Directive.

As the Comparative Analysis of this Directive reveals, member states have adopted sanctions of varying kinds to deal with a failure to comply with the information duties.

Item of Information	Request	Contract	Withdrawal
(a) The identities and domiciles of the parties, including specific information on the vendor's legal status at the time of the conclusion of the contract and the identity and domicile of the owner.	✓	✓	✓
(b) The exact nature of the right which is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the member state(s) in which the property or properties concerned relates is or are situated and if those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled.	✓	✓	✓
(c) When the property has been determined, an accurate description of that property and its location.	✓	✓	✓

D. Information duties

Item of Information	Request	Contract	Withdrawal
(d) Where the immovable property is under construction:			
(1) the state of completion;	✓	✓	✓
(2) a reasonable estimate of the deadline for completion of the immovable property;	✓	✓	✓
(3) where it concerns a specific immovable property, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities;	✓	✓	✗
(4) the state of completion of the services rendering the immovable property fully operational (gas, electricity, water and telephone connections);	✓	✓	✗
(5) a guarantee regarding completion of the immovable property or a guarantee regarding reimbursement of any payment made if the property is not completed and, where appropriate, the conditions governing the operation of those guarantees.	✓	✓	✗
(e) The services (lighting, water, maintenance, refuse collection) to which the purchaser has or will have access and on what conditions.	✓	✓	✗
(f) The common facilities, such as swimming pool, sauna, etc., to which the purchaser has or may have access, and, where appropriate, on what conditions.	✓	✓	✗
(g) The principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.	✓	✓	✗

D. Information duties

Item of Information	Request	Contract	Withdrawal
(h) The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the purchaser may start to exercise the contractual right.	✗	✓	✓
(i) The price to be paid by the purchaser to exercise the contractual right; an estimate of the amount to be paid by the purchaser for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs).	✓	✓	✓
(j) A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.	✗	✓	✗
(k) Whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange and/or resale scheme be organized by the vendor or by a third party designated by him in the contract.	✗	✓	✓
(l) Information on the right to cancel or withdraw from the contract and indication of the person to whom any letter of cancellation or withdrawal should be sent, specifying also the arrangements under which such letters may be sent; precise indication of the nature and amount of the costs which the purchaser will be required to defray pursuant to Article 5(3) if he exercises his right to withdraw; where appropriate, information on the arrangements for the cancellation of the credit agreement linked to the contract in the event of cancellation of the contract or withdrawal from it.	✓	✓	✓
(m) The date and place of each party's signing of the contract.	✗	✓	✓

5. Distance Selling Directive

The Directive 97/7 also requires the provision of specific items of information, both before and after a contract is concluded. Unlike the Directives 90/314 and 94/47, the Directive 97/7 specifies broad categories of information, because the Directive applies to the sale of a wide range of goods and services at a distance and can therefore only state generally applicable items of information.

Article 4 specifies a list of items which must be given before a contract is concluded. This information must be provided in a 'clear and comprehensible manner in any way appropriate to the means of distance communication used'. These items are:

- (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- (b) the main characteristics of the goods or services;
- (c) the price of the goods or services including all taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
- (h) the period for which the offer or the price remains valid;
- (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

Article 5 requires written confirmation of the information listed in paragraphs (a)-(f) above 'in good time during the performance of the contract', and no later than the delivery of goods. Instead of in writing, the information may be provided in a 'durable medium available and accessible' to the consumer. However, it is acknowledged that this provision can result in the duplication of information which has already been given in pursuance of Article 4, and Article 5 therefore provides that where the consumer has already received this information in

writing or in another durable medium before the contract was concluded, there is no need to repeat this information. However, there is a requirement to provide information on the following in addition to the items already mentioned:

- (i) written information on the conditions and procedures for exercising the right of withdrawal, within the meaning of Article 6, including the cases referred to in the first indent of Article 6(3),
- (ii) the geographical address of the place of business of the supplier to which the consumer may address any complaints,
- (iii) information on after-sales services and guarantees which exist,
- (iv) the [conditions]²⁴ for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

The Directive does not provide any specific sanctions for failing to provide the information required by Article 4. A failure to provide written confirmation of the information as required by Article 5 will, however, result in an extension of the period during which the consumer may exercise the right of withdrawal provided by Article 6 from the basic 7-day period to 3 months.

6. Price Indications Directive

This Directive requires the provision of pricing information in a particular format: the provision of the selling price and the unit price. Thus, in situations within the scope of this Directive, pricing information must comply with the requirements of this Directive. Where the price is given, it must be ‘unambiguous, easily identifiable and clearly legible.’²⁵ Again, no specific sanctions for failing to comply with this Directive are provided, and this matter is left to the member states.²⁶

²⁴ Note: In the official text of the Directive, the word “conclusions” is used. This seems to be a mistake, albeit one that appears not to have been corrected so far. The German version of the Directive uses the term “Kündigungsbedingungen” (our emphasis), and the French version refers to “les conditions de résiliation”, which strongly suggests that the English word here ought to be “conditions”, as substituted in the list in the main text.

²⁵ Article 4(1).

²⁶ Article 8.

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> D. Information duties	775
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7. Injunctions Directive

This Directive does not contain any information duties. It is relevant to the extent that it provides a mechanism to deal with a failure to comply with the information duties in other Directives, because it enables qualified entities to take action to prevent a continuing failure by a trader to provide information that is required by a particular directive.

8. Consumer Sales Directive

This Directive contains specific information requirements only in respect of ‘guarantees’.²⁷

This provision requires that a guarantee must contain information about:

- (i) the consumer’s legal rights under the national legislation on the sale of goods, and make clear that these rights are unaffected by the guarantee;
- (ii) the contents of the guarantee, including duration and territorial scope of the guarantee
- (iii) the essential particulars for making a claim, including the name and address of the guarantor.

A guarantee must be made available on request in writing or in another durable medium available and accessible to the consumer. It also has to set out the contents and essential particulars in plain and intelligible language. Somewhat strangely, the requirement of plain and intelligible language does not appear to extend to the first item (the reference to the consumer’s legal rights). However, if the guarantee is enforceable as a contract, the corresponding requirement in the Directive 93/13 may fill this gap in any event.

It may also be noted that it has been suggested by various commentators that Article 2 on ‘conformity with the contract’ could be read as containing an implied information obligation. This is because a seller who makes a consumer aware of a particular lack of conformity will not be liable for the goods’ non-conformity. Commentators have interpreted this in different

²⁷ Article 6.

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> D. Information duties	776
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ways, including as an obligation to disclose information,²⁸ an “indirect information requirement”,²⁹ or a simple “encouragement to disclose information”.³⁰

²⁸ See e.g., *Riesenhuber*, Party Autonomy and Information in the Sales Directive” in: Grundmann/Kerber/Weatherill, Party Autonomy and the Role of Information in the Internal Market.

²⁹ See *Wilhelmsson*, Remedies against Breach of Information Requirements, in Schulze/Ebers/Grigoleit in: Informationspflichten und Vertragsschluss in Acquis communautaire.

³⁰ *Twigg-Flesner*, *Information Disclosure about the Quality of Goods – Duty or Encouragement?* in: *Howells/Janssen/Schulze*, Information Rights and Obligations.

III. Issues common to several directives

The preceding overview of the various information duties in the 8 Directives under review in this study reveals a number of issues that may require consideration. Key matters in respect of which there is divergence between the directives relate to the form in which information is presented, and sanctions for failing to comply with these information obligations. Moreover, there may be circumstances where a transaction comes within the scope of more than one directive (e.g., where a package travel holiday is booked via a website), which may result in unnecessary duplication of information. We will consider these issues in turn.

1. Form in which information to be provided

The Directives which impose information duties also specify the form in which this information has to be given. However, as the directives were adopted over a period of 15 years, there is a degree of incoherence/inconsistency in the form requirements. The table below lists the various form requirements found in the directives.

Directive	Form requirement(s)
Doorstep Selling (85/577)	Written Notice (Art. 4)
Package Travel (90/314)	Legible, comprehensible and accurate (Art. 3(2)) [brochure] In writing or other appropriate form (Art. 4(1)) [pre-contract] In writing or such other form as is comprehensible and accessible to the consumer (Art. 4(2)(b)) [contract]
Unfair Terms (93/13)	If contracts in writing, must be in plain and intelligible language (Art.5)
Timeshare (94/47)	Contract in writing and language of member state (Art.4)

Distance Selling (97/7)	Clear and comprehensible manner; appropriate to medium of distance communication used (Art. 4) In writing or in another durable medium available and accessible to the consumer
Price Indications (98/6)	unambiguous, easily identifiable and clearly legible (Art. 4(1))
Consumer Sales (99/44)	in writing or in another durable medium available and accessible to the consumer (Art. 6).

This overview demonstrates that there is a degree of variation in the form requirements for the provision of information. It would be desirable to consider a uniform approach to the question of form of information, to improve overall coherence and to reduce the risk of compliance difficulty for business.

2. Sanctions for failing to provide information

One of the glaring gaps in all the directives imposing information obligations is a consistent scheme of sanctions for a failure to comply with such an obligation. In the directives imposing a right of withdrawal, not providing some of the information, may result in an extension to the period during which the right of withdrawal may be exercised.³¹ However, even in those Directives, this sanction does not extend to all failures to comply with an information duty.³²

Beyond these situations, the consumer acquis in its present format does not envisage any particular sanctions, leaving the matter for the member states to resolve. In considering whether to improve the acquis, the question of sanctions for failing to correspond with information duties may be one matter that may need to be given some attention. It was not apparent from the reports by the national correspondents whether the lack of sanctions is an obvious barrier to trade. A divergence in the various national laws in this matter does, however, create at least the potential of creating a barrier to trade. Introducing uniform

³¹ See further the section on ‘withdrawal’ in this study.

³² See the table on the Directive 94/47.

sanctions would, in that case, increase the likelihood of reducing such barriers. A clearer system of sanctions in this regard might also benefit consumer confidence, and therefore the operation of the internal market. However, this study has not discovered sufficiently strong evidence clearly to support the introduction of a coherent system of sanctions from the perspective of benefiting the internal market.

3. Overlapping information obligations

One of the matters which has not been resolved in the directives which impose information obligations is the problem that more than one directive may apply to particular types of contracts, with the consequence that a trader may be subject to more than one set of information rules. Of the Directives under consideration in this study, this problem is most likely to occur in respect of either package holiday contracts or timeshare contracts³³ concluded at a distance. The Directive 97/7 provides broad pre-contractual information duties, combined with a requirement to confirm information in writing or in another durable medium once a contract has been concluded. The Directives 90/314 and 94/47 contain detailed itemisations of the information to be provided in respect of these particular types of contract. Where both Directives apply at the same time, the two respective sets of information duties overlap and the overall amount of information to be provided is extended. In some instances, information that is required by the Directives 90/314 and 94/47 may correspond to one of the broad headings in the Directive 97/7, which reduces the overall overlap. However, there will be aspects in respect of which there is no such overlap. The following two tables concentrate on the overlap between Distance Selling and Package Travel (grey shaded areas indicate areas where one of the directives adds to the information obligations in the other).

³³ It may be asked whether timeshare contracts come within the scope of the Distance Selling Directive at all. Article 3(1) of the Directive 97/7 excludes “contracts for the construction and sale of immovable property or relating to other immovable property rights, except for rental”. Although the provision is not settled, the ECJ judgment in *C-423/97 - Travel-VAC S.L. v Sanchis* [1999] ECR I-2195, which involved an exclusion in very similar terms from the scope of the Directive 85/577, suggests that at least those timeshare contracts which provide more than a basic property right are covered in their entirety by the Directive 97/7 where the transaction falls within the scope of that Directive.

a. Pre-contractual information where package holiday sold by distance selling

Information items in Distance Selling Directive	Corresponding information items in Package Travel Directive
(a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address	No corresponding requirement in this Directive
(b) the main characteristics of the goods or services;	(i) destination and means, characteristics and categories of transport used; (ii) type of accommodation, its location, category or degree of comfort and its main features; its approval and tourist classification under the rules of the host member state concerned; (iii) the meal plan; (iv) the itinerary;
(c) the price of the goods or services including all taxes	Price (Art. 3(2) does not elaborate further on the exact information to be provided)
(d) delivery costs, where appropriate	(not appropriate)

Information items in Distance Selling Directive	Corresponding information items in Package Travel Directive
(e) the arrangements for payment, delivery or performance	either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance; whether a minimum number of persons is required for the package to take place and if so, the deadline for informing the consumer in the event of cancellation
(f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);	<i>No corresponding requirement in this Directive</i> – there is no right of withdrawal from package holidays under the Directive.
(g) the cost of using the means of distance communication, where it is calculated other than at the basic rate	<i>No corresponding requirement in this Directive</i> - this provision is specific to the Distance Selling Directive
(h) the period for which the offer or the price remains valid	<i>No corresponding requirement in this Directive</i>
(i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently	(not appropriate)

Information items in Distance Selling Directive	Corresponding information items in Package Travel Directive
Information not required by the Distance Selling Directive	general information on passport and visa requirements for nationals of the member state or states concerned and health formalities required for the journey and the stay;

b. Confirmation of information where package holiday sold by distance selling

Information items in Distance Selling Directive	Corresponding information items in Package Travel Directive
(a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address	the name and address of the organiser, the retailer, and, where appropriate, the insurer

D. Information duties

(b) the main characteristics of the goods or services;

times/places of intermediate stops and transport connections

details of the travel accommodation ('place to be occupied by the traveller'), such as the cabin/berth on a ship or sleeper compartment on a train

the travel destination(s), and, where periods of stay are involved, the relevant periods with dates

the means, characteristics and categories of transport to be used, the dates, times and points of departure and return

where the package includes accommodation, its location, its tourist category or degree of comfort, its main features, its compliances with the rules of the host member state concerned and the meal plan

the itinerary

visits, excursions or other services which are included in the total price agreed for the package

D. Information duties

(c) the price of the goods or services including all taxes	the price of the package, an indication of the possibility of price revision under Article 4(4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at airports, tourist taxes) where such costs are not included in the package
(d) delivery costs, where appropriate	(not appropriate)
(e) the arrangements for payment, delivery or performance	whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation the payment schedule and method of payment
(f) the existence of a right of withdrawal, except in the cases referred to in Article 6(3);	<i>No corresponding requirement in this Directive</i> – there is no right of withdrawal from package holidays under the Directive.
written information on the conditions and procedures for exercising the right of withdrawal, within the meaning of Article 6, including the cases referred to in the first indent of Article 6(3),	<i>No corresponding requirement in this Directive</i> – there is no right of withdrawal from package holidays under the Directive.

D. Information duties

<p>the geographical address of the place of business of the supplier to which the consumer may address any complaints</p>	<p>name/address/telephone number of organiser's and/or retailer's local representative; alternatively, of local agencies who could assist the consumer in cases of difficulty. If none of these is available, the consumer must be given an emergency contact number for the organiser/retailer</p>
<p>information on after-sales services and guarantees which exist</p>	<p>(not applicable)</p>
<p>the conditions³⁴ for cancelling the contract, where it is of unspecified duration or a duration exceeding one year</p>	<p>(not applicable)</p>

³⁴ See comment made earlier about the use of this word.

D. Information duties

Information not required by the Distance Selling Directive

Where journeys/stays abroad by minors: information enabling contact with the child/person responsible for the child

Optional insurance policy to cover the cost of cancellation by the consumer; or of assistance, including repatriation, in the event of accident/illness

special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which have been accepted

periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i>	787
	D. Information duties	

The challenge for the *acquis* review is to consider whether the lengthy information catalogues in the Directives 94/47 and 90/314, in particular, are still required, or whether they can be shortened. In the Directive 90/314, there appears to be a limited amount of duplication in the way the particular items of information are expressed, but this is only a minor aspect.

IV. Overall recommendations for the *acquis* review

- There is an obvious need to consider whether the detailed lists of items of information to be provided need to be maintained.
- In particular, it is possible (i) to replace the detailed lists with more general requirements; or (ii) to consider whether particular items are not essential and could be deleted. An analysis of the various items of information found in the directives under review suggests that what is generally needed is information about the main characteristics of the goods or services, the price including delivery charges, taxes and other costs, the address and identity of the business with whom the consumer is transacting, the terms of the contract, the rights and obligations of both contracting parties, and any available redress procedures.
- Regard should also be had to the comparative analysis of the specific Directives, especially Directives 97/7, 90/314 and 94/47, for the national variations regarding the various information duties in these directives. In this regard, the question of overlapping information duties needs to be addressed.
- If it is desirable to retain more precise information catalogues, e.g., for Directive 90/314 or 94/47, it is recommended that consideration is given whether any of the additional items of information required by virtue of the implementing legislation in the member states should be added to the list (even if some existing items are removed).
- At the present time, the form requirements vary between the Directives. It should be made clear that information needs to be clear and precise, and expressed in plain and intelligible language. Moreover, unless a contract is concluded verbally in its entirety, the information should be provided in writing. In this context, it should be clarified that writing may be replaced by another textual form on a durable medium, provided this is reasonably accessible to the recipient.

- Furthermore, there is no coherent system of sanctions for failing to comply with information duties in place. A special position is occupied by information about the right of withdrawal, where a failure to provide this information leads to an extension of the period during which this right may be exercised.³⁵ Beyond that, however, the situation is left unclear, and the member states have adopted rather diverse approaches (see the comparative reports on Directives 97/7, 90/314, and 94/47, in particular). A failure to comply with these obligations can be the subject of an action for an injunction (as per Directive 98/27). As far as individual consumers are concerned, a clearer rule regarding sanctions should be adopted; in this regard, it may be considered whether a failure to comply with information duties should result in the non-enforceability of contracts against a consumer (as is the case in many member states), or a claim for damages.

³⁵ See further, section on ‘right of withdrawal’.

<i>Consumer Law Compendium</i>		<i>Comparative Analysis</i> D. Information duties	789
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