

# Overview of the status of the Digital Single Market strategy and end user rights regulation in the EU

Implementation of sector specific end-user protection based on the Universal Service Directive

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- Digital Market strategy: objectives and state of play
- Geoblocking
- Market developments
- Implementation of USD rules in EU Member States
- Overlap of sector-specific with horizontal rules
- Conclusions

# Digital Single Market Strategy (I)

- Overall goal is: more protection, better, faster and cheaper connections, no blocked access to more online content
- Roaming: roaming tariffs obsolete from 15 June 2017; consumers pay the prices they pay at home
- Cross border portability of online content services; from early 2018 consumers will be able to access the online subscriptions to films, sport events, e-books, video games when travelling in other EU countries
- Internet connectivity for all; additional spectrum (700 MHz) will be made available, more cooperation, introduction of 5G, connecting Europe Broadband Fund, WiFi
- Better online market place for consumers and business
- Fully harmonised digital contract rules
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# Digital Market Strategy (II)

- More cooperation between national consumer protection authorities
- Online consumer dispute resolution system
- Making protection of privacy and personal data a reality in the internet
  
- To sum up: 35 proposals of the Commission since 2015; one proposal adopted (Roaming)

# Digital Single Market Strategy (III)

## Digital Single Market achievements



As of **15 June 2017**, **mobile roaming charges will finally be abolished** in the EU.



As of **May 2018**, a new single set of EU rules on **data protection and privacy** in electronic communications.



As of **2020**, EU Member States will for the first time coordinate their use of the **high-quality band 700 MHz**.



As of **early 2018**, citizens will be able to **enjoy their online films, sports broadcasts, music, video games, and e-book subscriptions when travelling** in the EU.



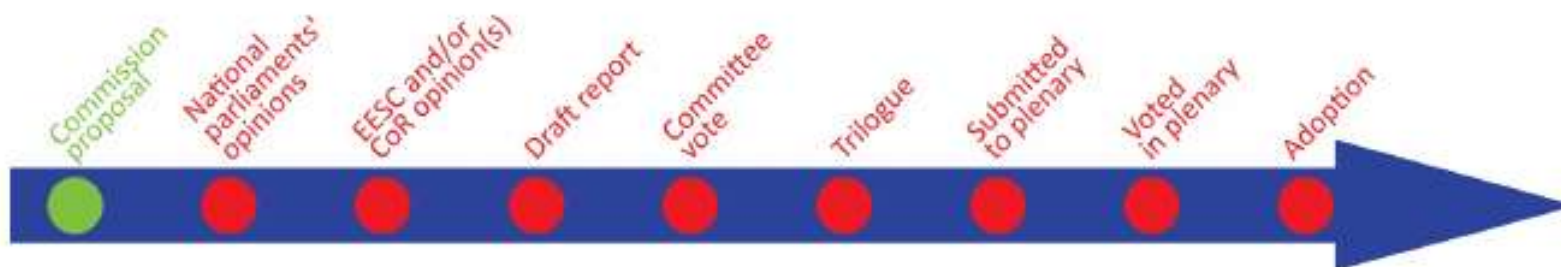
As of **May 2018**, the EU will be equipped with its first ever **common cybersecurity law** to help keep network and information systems safe in all Member States.



If EU governments follow the Commission **e-government action plan**, they could save up to €5 billion per year as of **2020**.

# Geoblocking

- Geo-blocking practices commonly restrict cross-border sales of tangible goods as well as of electronically supplied services and electronically delivered content services in the EU.
- On 25 May 2016, the European Commission proposed a new regulation to prevent traders from discriminating between online customers based on their nationality, place of residence or place of establishment within the internal market.



## 25.04.2017: EU Parliament approves new geo-blocking rules

- The draft law defines specific situations in which geo-blocking will not be allowed.
- Without paying more, buyers from another EU country than the trader would be able to:
  - buy goods (e.g. household appliances, clothes) even when the trader does not deliver them in the consumer's member state of residence, if there is an option to collect the goods at an agreed location in another EU country (the proposal does not introduce an obligation to deliver across the EU),
  - receive online from the trader services not protected by copyright, such as cloud services, firewalls, data warehousing, website hosting,
  - (added by MEPs) receive e-books, e-music, games or software (i.e. non-audiovisual copyrighted content) if the trader has the right or a licence to use such content for the countries concerned, and
  - make a booking outside the consumer's place of residence (e.g. hotel stays, sports events, car rental, music festivals or leisure park tickets).
- Sectors such as audiovisual services (including broadcasts of sports events provided on the basis of exclusive territorial licenses) are excluded from the scope of the draft regulation for the time being.
- Next steps: Three-way talks (trilogues) with the Council and the Commission, with a view to reaching an agreement on the final law.



# Market developments

# Market developments

## Very high-speed broadband & OTT

- 1. Roll-out and take-up of very high-speed broadband** (fixed and mobile), while beneficial for end-users, raises a number of issues, e.g.:
  - Traffic management by *Internet Access Service (IAS)* providers
  - Insufficient contractual specification of traffic management measures, speed and other quality of service parameters by IAS providers
  - Market transparency issues

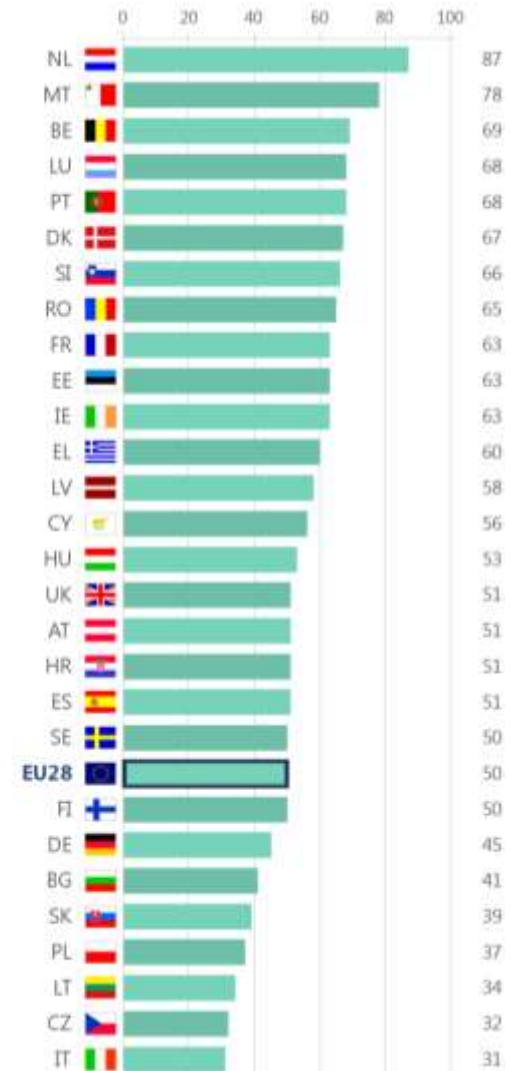
They are addressed by the 2015 Open Internet Regulation (OIR).

- 2. Proliferation of online services**, again of huge benefit to end-users, also raises end-user rights issues:
  - OTT services that are functionally similar to ECS (like VoIP and messaging services) are not subject to sector-specific rules
    - This may create uncertainty on the consumer side

# Market developments

## Bundling

- Bundling of services has steadily increased.  
In 2015, 50% of consumers already subscribed to a bundle according to Eurobarometer.
- There are large differences between Member States in the extent of bundling.



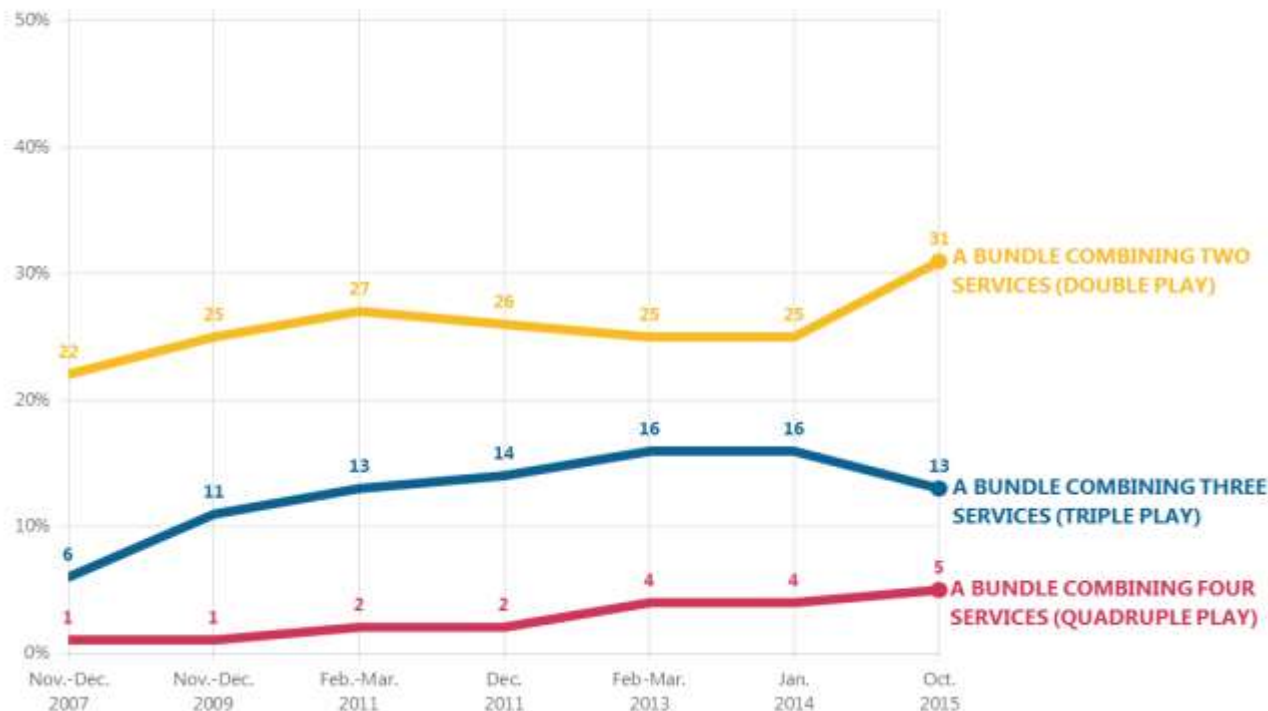
Source:  
European Commission (2016), E-Communications and the Digital Single Market,  
Special Eurobarometer 438, p. 69.

# Market developments

## Bundling

- Most prevalent in the EU is double play (usually broadband access + voice), but triple play and quad play is on the rise

Numbers of services included in the bundles (% - EU)



Source: European Commission (2016), E-Communications and the Digital Single Market, Special Eurobarometer 438, p. 73

- Bundling, while often beneficial for end-users, could also raise end-user rights issues:
  - Comparability of offers and market transparency
  - Ease of switching

# Market developments

## Ease of comparing offers



- Special Eurobarometer 438 of 2016 (October 2015 data) shows that MS varied between 31% and 88% regarding ease of comparing offers, with an average of 69%.
- This represents a significant improvement relative to the previous Eurobarometer (March 2014):
  - Romania improved strongly from below average in 2014 (63%) to being in top 4
  - Denmark remains at the bottom with even lower score (31%) compared to 2014 (44%)
  - Sweden improved from second worst in 2014 (47%) to 59%

Source: European Commission (2016), E-Communications and the Digital Single Market, Special Eurobarometer 438

# Market developments

## Ease of comparing offers

- Comparison facilities available in almost all MS, though with great variation on services covered and provider of comparison facility
- Direct NRA involvement in comparison tools appears to have a positive impact on ease of comparing offers.
  - MS where NRAs provide comparison websites/tools for services and tariffs are also those where ease of comparing offers is highest.
  - In contrast, in MS where ease of comparing offers is lowest (or where the majority of the service/tariff comparison websites are provided by third parties or not available at all), the NRA typically does not accredit the third parties' website/tools.

# Market developments

## Extent of switching

- According to Eurobarometer Consumer Survey 2014, the share of EU households that switched between providers is similar for bundles, mobile and Internet, while it is substantially lower for fixed telephone and TV

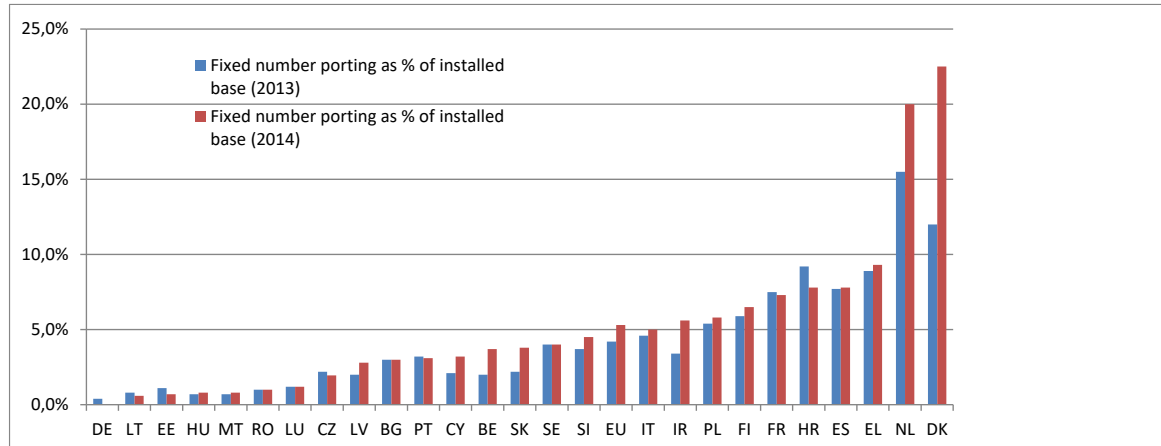
	% of households which has changed service provider ...	
	... in the past	... last year
Bundles	45	11
Mobile telephony	44	10
Internet	43	9
Fixed telephony	37	6
Television	26	5

Source: European Commission (2014), Special Eurobarometer 414

- Large differences between MS: Switching behaviour is more common in ES and NL, whereas it is less pronounced in RO or CY.

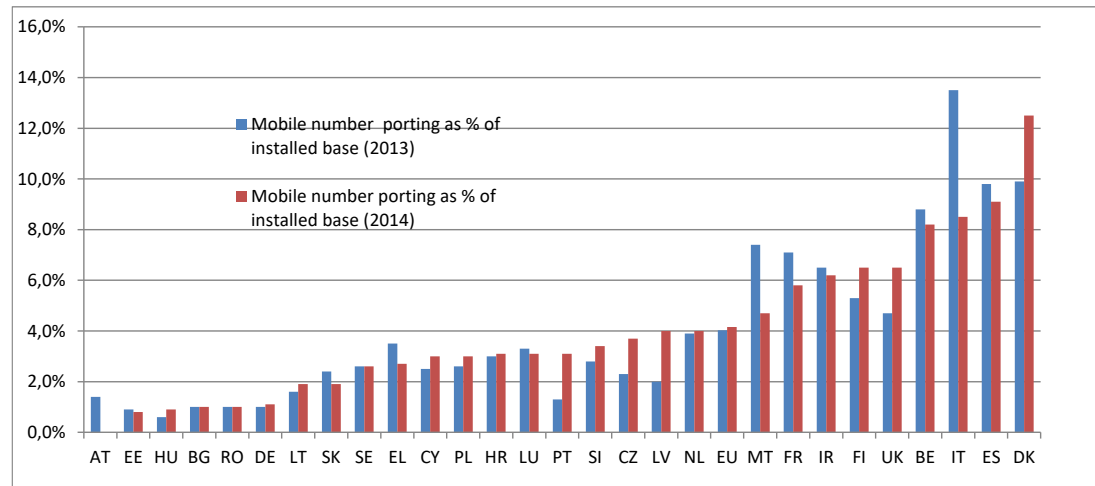
# Market developments

## Extent of switching with number porting



- Aggregate switching with fixed number porting for the EU as a whole was 5,3% in 2014.

- Aggregate switching with mobile number porting for the EU as a whole was 4,2% in 2014.



WIK calculations. Date sources: European Commission; Implementation report 2015; European Commission: Financial indicators, fixed and mobile telephony, broadcasting indicators; IDATE database



# Implementation of USD rules in EU Member States

USD Articles + description	Implemented?
20.1) Contract specifications (obliged details for end-user contract)  20.2) Notification end users when change in contract, 1 month notice. End user right to cancel the contract without penalty	✓ All 28 MS for residential X In 10 MS not for business  ✓ All MS (LU ?) ✓ DK, BE, NL shorter periods
<b>Open Internet Regulation (EU 2015/2120)- 30/4/16 in effect</b> Specifies contract clauses for applied traffic management, other QoS, volume limitations, realistic speed, available remedies and complaint handling for end-users.	

**Conclusion:** Residential users, fine. Business users; still some work to do.  
Overall: different rules for ECS and non-ECS (bundles) – a role for horizontal regulation

# Transparency

USD Articles + description	Implemented?
<p>21.1) NRAs can oblige operators to publish transparent, comparable, up-to-date information <u>before</u> contract conclusion</p>	<ul style="list-style-type: none"><li>✓ Almost all</li><li>✓ IE: code of practice</li><li>✓ FR: info table</li></ul>
<p>21.2) NRAs to encourage provision of comparable information &amp; can oblige service providers to publish prices, termination charges, terms and conditions, measures to shape traffic to avoid congestion and how this impacts service quality.</p>	<ul style="list-style-type: none"><li>✓ 27/28 MS have service/tariff comparison tools (BG not)</li><li>✓ 50% MS bundle comparison</li></ul>
<p><b>Open Internet Regulation (EU 2015/2120)</b> Specifies contract clauses for applied traffic management, other QoS, volume limitations, realistic speed, available remedies and complaint handling for end-users.</p>	

**Conclusion:** sufficient data, matter of structuring, perhaps best by self regulation?. QoS plays an important role in comparebility.

# Quality of Service

USD articles + description	Implemented?
<p>22.1) MS to ensure that NRAs can request operators to publish comparable, up-to-date QoS info</p> <p>22.2) NRAs can specify the measurement of specific QoS parameters</p> <p>22.3) NRAs can set minimum QoS requirements to prevent degradation of service. However EC/BEREC opinions to be considered.</p> <p><b>Open Internet Regulation (EU 2015/2120)</b> Specifies contract clauses for applied traffic management, other QoS, volume limitations, realistic speed, available remedies and complaint handling for end-users.</p>	<ul style="list-style-type: none"><li>✓ 50% MS operators obliged to publish QoS information</li><li>✓ Mostly for fixed/mobile BB</li><li>• 7 MS no measures at all</li> <li>• Set only in 8 MS (28%) for specific services</li><li>• If set, apply for all providers</li><li>• Variation in penalties</li></ul>

**Conclusion:** clear need for QoS transparency. Horizontal regulation is covering this, however self regulation might play a role because of technical nature topic.

# Provider switching

USD articles + description	Implemented?
30.1) Ensures that subscribers can retain their number	✓ All 28 MS implemented
30.2) Number portability should be cost oriented and not distort competition	✓ Mostly compensation ✓ Fixed 5-10 € ✓ Mob 5-30 €
30.4) Porting be done < 1 WD, however national circumstances could be considered. Loss of service max 1 WD	✓ In general, activation on RO network 1 day ▪ But overall process wide variation 1-39 ! ✓ However 8 MS has complete process < 1 WD

**Conclusion:** fixed and mobile nr porting can be more uniform (set realistic overall porting time and RO led process). Porting aspects of bundles important.

# Out of court dispute resolution

USD articles + description	
<p>34.1) Member State to ensure that transparent, simple, inexpensive out of court procedures are available for disputes on ECS.</p> <p>34.1) Disputes shall be settled fairly and promptly and may include compensation</p> <p>34.2) MS to ensure that legislation does not hamper complaints offices and online services for dispute resolution.</p>	<ul style="list-style-type: none"><li>✓ Majority MS (18) NRA organised out of court dispute resolution.<ul style="list-style-type: none"><li>▪ Mainly NRA or consumer organisations</li><li>▪ Large variation in amount (few hundred to 34,000 per year)</li></ul></li><li>✓ Avg resolution time: 4 months<ul style="list-style-type: none"><li>▪ High variation: 0,5 – 14 months</li></ul></li><li>✓ Despite high volume UK and PL short resolution time 1,5-2 months</li></ul>

**Conclusion:** rules ok, implementation issues (large number of complaints, limited resources). Harmonisation on varying resolution time. New horizontal rules rules.

# **Overlap of sector-specific with horizontal rules**

- Overview of Consumer Protection Law
- When is there an overlap?
- Articulation between ECRF and horizontal Consumer Protection Law
- Analysis of possible overlaps
  - Priority measures
  - Which protection rules?
  - Similar purposes but distinct measures
  - Similar purposes and similar measures
- Main issues and solutions



# Overlap of sector specific with horizontal rules

## Overview of consumer protection law

- **Material horizontal consumer protection law**

- **Directive 2011/83/EU on consumer rights (CRD)**
- Directive 2006/114/EC concerning misleading and comparative advertising (MAD)
- **Directive 2006/123/EC on services (SD)**
- Directive 2005/29/EC on unfair B2C commercial practices (UCPD)
- (Directive 2002/65/EC distance marketing of consumer financial services)
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (DSCG)
- Directive 93/13/EEC on unfair terms in consumer contracts (UCTD)
- *Proposals for a directive on contracts for the supply of digital contents and for a directive on contracts for the online and other distance sales of goods*

# Overlap of sector specific with horizontal rules

## Overview of consumer protection law

- **Procedural horizontal consumer protection law**
  - Regulation EU 524/2013 on online dispute resolution for consumer dispute (ODRR)
  - Directive 2013/11/EU on alternative dispute resolution for consumer disputes (ADRD)
  - Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters

# Overlap of sector specific with horizontal rules

## Overview of consumer protection law

### ■ Remarks

#### ➤ Other sector specific regulations applicable to consumers

- Directive 2010/13/EU on audiovisual media services (AVMSD)
- Directive 2007/64/EC and directive 2015/2366/EU on payment services (DSP 1 + DSP 2)
- Directive 2000/31/EC on certain legal aspects of information society services (eCOMD)
- Directive 1995/46/EC on privacy and processing of personal data (+ GDPR) / Directive 2002/58/EC e-privacy

#### ➤ Applicable to OTT services?

- Most material and procedural horizontal consumer protection Law
- Some abovementioned sector specific regulations applicable to consumers (depending on OTT)

# Overlap of sector specific with horizontal rules

## When is there an overlap?

- Overlap ?

- At the EU level between directive A and directive B:

- When a specific situation falls within the scope of Directive A and Directive B (or within the scope of specific provisions of these directives)
- When protection measures are “similar” in Directive A and Directive B

	Directive A	Directive B
Within scope?	v	v
Protection measure	=	=

# Overlap of sector specific with horizontal rules

## When is there an overlap?

- Overlap ?
  - Also possible between the EU level and the Member States level
    - Why? Minimum harmonisation Directive measures at the European level (DIR/REG A) – when implemented into Member States (national law a), additional protection measures are introduced.
    - Consequences? Possible overlap between MS measures and further “similar” protection measures laid down in other Directives (DIR B).

	DIR/REG A (e.g. USD, OIR)	National Law a	Directive B (e.g. CRD)
Within scope?	v	v	v
Protection measure	NO	=	=

# Overlap of sector specific with horizontal rules

## Articulation between ECRF and horizontal law

### 1. Within the scope of both regulations ?

In specific occurrences (publicly available services governed by ECRF), both horizontal consumer protection regulations and ECRF applicable?

→ **YES** (see 2.)

→ **NO** (not an issue but could be useful, as inspiration, for revision of the ECRF – e.g. : the Directive on the sale of consumer goods)

### 2. Similar protection measure?

Are there similar protection measures (e.g. same transparency rules) in both regulations?

→ **YES** : (possible) overlap (with further issues)

→ **NO** : no overlap and complementary measures

# Overlap of sector specific with horizontal rules

## Articulation between RFEC and horizontal law

	Applicable to ECS?	Similar protection rules	Other protection rules
Consumer Rights DIR (2011)	v	v	v
Misleading and comparative advertising DIR (MAD) (2006)	v		v
Services DIR (2006)	x	v	v
Unfair Commercial Practices DIR (2005)	v	(v)	v
Consumer Sales DIR (DSCG) (1999)	x		v
Unfair terms in consumer contracts DIR (UCTD) (1993)	v	(v)	v
Online dispute resolution for consumer disputes REG (ODRR) (2013)	v		v
Alternative dispute resolution DIR (ADRD) (2013)	v	v	


  
**Possible overlap, if applicable**

# Overlap of sector specific with horizontal rules

## Examples

- Examples of complementary consumer protection rules
  - Consumer Rights Directive :
    - Prohibition of additional payments (Art. 22)
    - Additional protection rules when the contract is concluded at a distance (Art. 6 and ff.)
  - Unfair Commercial Practices Directive
    - Prohibition of misleading and aggressive commercial practices (Art. 6 and ff.)
  - Misleading Advertising Directive
    - Requirements applicable to comparative advertising (Art. 4)



## (1) Priority provisions within the regulations?

- Art. 1 (4) of USD : “*The provisions of this Directive concerning end-users’ rights shall apply without prejudice to Community rules on consumer protection, in particular Directive-s 93/13/EEC and 97/7/EC, and national rules in conformity with Community law*”.
- Recital 11 of the CRD: “... *this Directive should be without prejudice to Union provisions relating to specific sectors, such as [...] electronic communications*”

→ Circular cross reference

- Art. 3 of ADR Directive : “*save as otherwise set out in this Directive, if any provision of this Directive conflicts with a provision laid down in another Union legal act and relating to out-of-court redress procedures initiated by a consumer against a trader, the provision of this Directive shall prevail*”

→ If conflict, art. 3 ADR Directive > art. 34 USD

### (3) Protection rules with similar purposes but distinct measures - examples

- Compare USD protection measures and measures prescribed by :
  - **Unfair Commercial Practices Directive**
    - Art. 7 : Prohibition of misleading omission
      - compare to information to be provided under Art. 20 USD
    - Art. 8 and 9, d) : Prohibition of aggressive commercial practice, being agreed that, to assess coercion or undue influence, account shall be taken of „any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader“
      - compare to rules on contract duration, termination and switching prescribed by Art. 20.2, 30.5 and 30.6 of USD

# Possible overlap

## Which protection rules?

	RFEC		Consumer protection rules				
	USD	OIR	CRD	ADRD	(SD)	UCPD	UCTD
Terms & conditions	√	√	√		√		
Publication of information	√		√		√	(√)	(√)
Comparison tools	√						
Publication QoS information	√	√			√		
Minimum QoS levels	√	√			√		(√)
Contract duration/termination	√					(√)	(√)
Provider switching process	√					(√)	
Number portability	√						
Dispute resolution	√	√	√	√	√		

## (3) Protection rules with similar purposes but distinct measures - examples

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      - compare to rules on contract duration, termination and switching prescribed by Art. 20.2, 30.5 and 30.6 of USD

## (3) Protection rules with similar purposes but distinct measures - examples

- Compare USD protection measures and measures prescribed by :
  - **Directive on unfair contract terms** – cf. Annex with prohibited list of terms
    - (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early
      - compare to rules on contract duration and termination prescribed by Art. 30.5 of USD
    - (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided ;
    - (m) giving the seller or supplier the right to determine whether the goods or services are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract
      - compare to rules on quality of service prescribed by Art. 22 of USD

## (4) Protection rules with similar purposes and similar measures - “Transparency” example

	USD	CRD	SD
Scope ( <i>ratione personae</i> )	B2B and B2C	B2C	B2B and B2C
Scope ( <i>ratione materiae</i> )	Publicly available electronic communications services	Services and goods	Services
Scope ( <i>conclusion of the agreement</i> )	Offline / distance / online (but not specific rules resulting from these features)	Offline / distance (with specific rules if distance)	Offline / distance / online (but not specific rules resulting from these features)

## (4) Protection rules with similar purposes and similar measures - “Transparency” example

	USD	CRD	SD
	Art. 20	Art. 5	Art. 22
When?	When subscribing the contract NB : art. 21 also prescribes transparency requirements at other moments	Before the consumer is bound by a contract	Before the conclusion of the contract (or before the service is provided if no written contract)
How?	Clear, comprehensive and easily accessible form	In a clear and comprehensible manner	Made available and communicated in a clear and unambiguous manner
Content of info?	<ul style="list-style-type: none"> <li>- Identity and address of undertaking</li> <li>- Services provided (with additional details)</li> <li>- Details of prices and tariffs</li> <li>- Etc.</li> </ul> <p>But differences remain in the lists (eg additional details in services provided)</p>	<ul style="list-style-type: none"> <li>- Identity and address of trader (b)</li> <li>- Main characteristics of services (a)</li> <li>- Total price of services (c)</li> <li>- Etc.</li> </ul> <p>But differences remain in the lists (eg additional details in price)</p>	<ul style="list-style-type: none"> <li>- Name and address of provider (a)</li> <li>- Main features of the service (j)</li> <li>- Price of services (i)</li> <li>- Etc.</li> </ul> <p>But differences remain in the lists (eg insurance and guarantees)</p>

# Overlap of sector specific with horizontal rules

## Main issues

- Complex legal framework (with the risk that it is not fully respected).
- Penalties could be contradictory (within MS).
- Inconsistent terminology (consumers, etc.).
- Problems – to the prejudice of the internal market – increase when the rules are set by minimum harmonisation directive.



# SWOT analysis: End-user rights

	Positive Strengths	Negative Weaknesses
Current or predictable	<p>1. Thanks to minimal harmonisation, national authorities enjoy discretion to respond to threats observed in their respective Member States.</p> <ul style="list-style-type: none"> <li>• End-users are well protected by USD provisions that address most of the relevant issues (complete contract terms, information on contract terms, transparency and quality of service, termination and switching).</li> <li>• Both business and residential end-users are covered by the protection of the USD.</li> <li>• Member State authorities that enforce USD end-user rights have good knowledge of national circumstances, including the resolution of end-user complaints.</li> </ul>	<p>1. Minimal harmonisation leads to harmful fragmentation. Network operators and businesses operating in multiple Member States are confronted with different USD end-user protection rules, thus increasing compliance costs and negatively impacting residential cross-border business.</p> <ul style="list-style-type: none"> <li>• Overlaps between USD provisions and horizontal consumer protection law risk increased compliance costs.</li> <li>• In some Member States, multiple bodies handle end-user consumer complaints. Overlapping roles may confuse end-users and thus impede effectiveness.</li> <li>• The increased significance of non-ECS OTT services that fall outside of sector specific end-user rules may distort competition due to lower compliance requirements. It may lead to gaps in the protection of end-users of OTT services, thus undermining the effectiveness of USD end-user protections.</li> <li>• Bundled services pose challenges, for example when a component of a bundle is cancelled.</li> <li>• End-user contract duration limits may dissuade investment in challenge areas.</li> </ul>
Not fully predictable	<p>1. The provisions of the Universal Service Directive that overlap most heavily with the Consumer Rights Directive could be eliminated.</p> <ul style="list-style-type: none"> <li>• The Internet could facilitate price and quality of service comparisons and the sharing of consumer information, thus better achieving the transparency and QoS goals of Art. 21 and 22 USD.</li> </ul>	<p>1. If USD sector-specific rules were withdrawn altogether, business and especially small business end-users might be less well protected due to the inability of horizontal consumer protection legislation to address certain specific issues that arise in the telecommunications sector.</p> <ul style="list-style-type: none"> <li>• If telecom dispute resolution is increasingly handled under horizontal legal instruments, they might increasingly be handled by non-telecom experts. This might reduce effectiveness.</li> </ul>



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