

# Linguistic Freedom of Citizens and Companies regarding the Catalan Policies of Imposition, Sanction, and Fine

## Assessment of the legal consequences of the Catalan legislation as regards consumer rights

### ABSTRACT

Article 128-1 of the Consumer Code of Catalonia, Law 22/2010 of the 20 July, in line with Article 211-5 thereof, making reference to Law 1/1998 of the 7 January on Linguistic Policy, provides on the one hand, that consumers are free to be served in the official language they choose; however, Article 128-1(2) establishes that consumers are entitled to receive (thus establishing an obligation on businesses to provide) certain information (including that set out in Articles 5 and 6, Consumer Rights Directive 2011/83/EU) in Catalan. Per Article 128-1(2), this information does not need to be provided in any other official language of Spain. In the case of the violation of these linguistic requirements, the Catalan Consumer Code also makes provision for the imposition of sanctions (on the basis of territorial and subject-matter jurisdiction) by public consumer bodies, agencies of the Government of Catalonia or the Catalan Consumer Agency, if the offence has an impact across more than one Catalan territory (per Article 312-10 and Article 312-11, Law 22/2010 of the 20 July). Per Article 332-2, violations of Article 128-1 would constitute a "minor offence", sanctioned by a fine of up to 10,000 Euros.

This briefing aims to examine: 1) whether these provisions of the Catalan Consumer Code requiring the provision of information to consumers in Catalan are compliant with EU law principles of consumer protection, particularly the Consumer Rights Directive 2011/83/EU; 2) whether the provisions are compliant with the objectives of consumer protection; and 3) whether the information obligations established in the Catalan Consumer Code offer a suitable level of consumer protection to both Spanish speakers and non-speakers of Catalan on the territory of the Autonomous Community of Catalonia. The briefing firstly begins by setting out the objectives and legal basis of EU consumer law, the legal instruments by which EU consumer law is legislated for, as well as its scope. It then examines the role of information in EU consumer law broadly, and in relation to the Consumer Rights Directive 2011/83/EU in particular, and the related concept of



the consumer therein. The EU law requirements as to the imposition of fines are then set out, and the compatibility of the Catalanian sanctions regime with EU law are examined. Finally, the briefing draws some brief conclusions on the level of consumer protection afforded to Spanish speakers and non-speakers of Catalan on the Catalan territory.

## The Framework of EU Consumer Law

### The Aims and Objectives of EU Consumer Law

The European Union, through its law and policy, aims to provide for a high level of consumer protection of the health, safety, economic and legal interests of consumers across the Union. Per Article 169(1) TFEU, "the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests." EU consumer law establishes substantive (and in limited circumstances)<sup>1</sup> procedural rights for consumers regardless of the Member State in which they reside.<sup>2</sup>

### The Legal Basis of EU Consumer Law: Relevant Provisions of EU Primary Law

Consumer protection is established in various provisions of primary EU law.<sup>3</sup> On the one hand, EU consumer law and policy is inherently tied to the establishment of the internal market. This is clear from Article 3(3) TEU (which refers to the establishment of the internal market and the development of a highly competitive social economy though makes no explicit reference to consumer protection), and from the competency bases on which consumer protection law and policy is legislated. The key legal bases for legislating for consumer law are found in Article 114 TFEU, and Article 169 TFEU. While Article 169 supplements Article 114 as a legal basis, in practice, it has been of limited legislative use;<sup>4</sup> instead, consumer legislation has been predominantly based on Article 114 TFEU,<sup>5</sup> which provides a legal basis for the approximation of national laws to the ends of the "establishment and functioning of the internal market". Indeed Directive 2011/83/EU on consumer rights (hereinafter Consumer Rights Directive 2011/83/EU) finds its legal basis in Article 114 TFEU.

On the other, Article 12 TFEU also establishes that the requirements of consumer protection should be taken into account in the development of EU law broadly, which entails that the objectives of

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<sup>1</sup> Due to the European Union's limited competence in relation to national procedural law.

<sup>2</sup> This is clear from the internal market competence for legislating for consumer law.

<sup>3</sup> Including Articles 4(2)(f), 12, 114(3), and 169(1) TFEU.

<sup>4</sup> Indeed, Article 169 TFEU has only been used as the competence basis for one directive, namely, Directive 98/6/EC. The limited use of Article 169 TFEU as a legal basis arguably derives from the fact that consumer protection was not referenced in the Rome Treaty, and was established only explicitly as a legislative basis in the Treaty of Maastricht (Articles 3(s) and 129(a), cemented in the Treaty of Amsterdam in Article 153).

<sup>5</sup> Article 169(2)(a) TFEU refers to Article 114 TFEU as the basis upon which consumer protection rules can be based, "in the context of the completion of the internal market".

consumer protection can be integrated into “other Union policies and activities”<sup>6</sup> while Article 38 of the Charter of Fundamental Rights of the European Union (hereafter CFR)<sup>7</sup> provides that “Union policies shall ensure a high level of consumer protection”.<sup>8</sup> Per Article 4(2)(f) TFEU, consumer protection is a competence shared with the Member States. Moreover, Article 169(4) TFEU provides that the Member States may provide for a higher level of consumer protection, providing this is compatible with primary EU law.<sup>9</sup>

## The Legal Instruments and Scope of EU Consumer Law

In line with the above-mentioned provisions of primary EU law, EU consumer law has developed predominantly via positive integration (engaging a combination of legal instruments per Article 288 TFEU, primarily Directives and Regulations),<sup>10</sup> establishing substantive and – only recently, and indeed to a limited extent<sup>11</sup> – procedural rights for consumers. Taking the form of Directives, EU law must be implemented in national legal systems via its transposition in domestic legislation.<sup>12</sup> EU consumer law is fragmented and sectoral. As of 2025, there are over 20 pieces of secondary law governing consumer relationships and of general application;<sup>13</sup> this legislation encompasses rules

<sup>6</sup> Article 12, TFEU, OJ C326/47.

<sup>7</sup> Charter of Fundamental Rights of the European Union, OJ C326/391.

<sup>8</sup> While Article 38 CFR does not provide a substantive right to consumers, it shapes the Union’s objectives in promoting a high level of consumer protection. Article 47 CFR, which establishes a right to an effective remedy and a fair trial, has been used by the Court of Justice of the European Union (hereafter CJEU) to ensure the effective protection and enforcement of consumer rights (H-W Micklitz and N Reich, ‘The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)’ (2014) 51 *Common Market Law Review* 771).

<sup>9</sup> Indeed, EU consumer law either provides for minimum, maximum or targeted maximum harmonisation which shapes the degree of discretion left to the Member States. Article 4, Consumer Rights Directive 2011/83/EU, for example, provides for targeted maximum harmonisation (the Proposal aimed at full or maximum harmonisation but debates arose in respect of the lack of flexibility in transposition within the Member States). Targeted maximum harmonisation provides for the identification of those regulatory aspects of consumer contracts in which barriers to trade have arisen consequent to minimum harmonisation and the imposition of fully harmonised norms and standards of protection therein; see H Schulte-Nölke *et al* (eds), *EC Consumer Law Compendium: Comparative Analysis* (Sellier 2008), p 797.

<sup>10</sup> It should be noted that consumer law has also developed via negative integration, that is, the removal of national measures that constitute barriers to trade in light of free movement rules, and which cannot be justified; see, for example, C-120/78 *Rewe v Bundesmonopolverwaltung für Branntwein* EU:C:1979:42.

<sup>11</sup> Limited exceptions include, for example EU rules on cross-border civil procedure (including for example, Regulation 1215/2012/EU on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), as well as Directive 2020/1828/EU on representative actions for the protection of the collective interests of consumers, Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Directive 2019/2161/EU as regards the better enforcement and modernisation of Union consumer protection rules.

<sup>12</sup> Article 288 TFEU.

<sup>13</sup> A trigger for the application of (most) consumer protection rules is the existence of the consumer to a contract, generally defined in the negative, as a natural person acting outside his trade or profession (for example, Article 2(b), Directive 93/13/EEC on unfair terms in consumer contracts). However, each Directive generally defines the “consumer” for its own purposes, while different concepts of the consumer exist within Member States (and minimum harmonisation legislation allows for consumer law to apply beyond the definition of consumer in EU law); as such, there is much academic discussion on the absence of a uniform consumer concept.

governing distance selling contracts,<sup>14</sup> unfair contract terms,<sup>15</sup> unfair commercial practices<sup>16</sup> and misleading advertising,<sup>17</sup> consumer credit<sup>18</sup> and package holidays.<sup>19</sup> Additional secondary legislation has also been enacted governing specific products, including product liability,<sup>20</sup> the safety and labelling of toys, cosmetics, medicines, and food products.

## EU Consumer Law and Information Provided to the Consumer

### The Information Paradigm in EU Consumer Law

Consumer law is shaped by the so-called information paradigm, which entails that consumers should be afforded accurate, clear and consistent information to make choices. This entails that the consumer is a rational economic actor who can exercise self-determination on the market; autonomy and freedom of contract should in principle allow consumers to exercise such choice, however, consumer law recognises the existence of information asymmetries between the consumer and trader. Information is thus the key mechanism employed in EU consumer law to correct these asymmetries.<sup>21</sup>

### The Concept of the Consumer in EU Consumer Law

The concept of the consumer is relevant to the establishment of these information rights and obligations. As above, there is a lack of a common conceptualisation of the consumer in EU law; at its very base, the idea of the consumer as a non-professional party can be said to be a common denominator.<sup>22</sup> For example, in the Consumer Rights Directive 2011/83/EU, the consumer is defined as “any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”.<sup>23</sup>

However, different theoretical or normative conceptualisations<sup>24</sup> have been developed in relation to free movement law and the harmonisation of consumer protection. This includes the idea of the “average consumer” and more recently, the vulnerable consumer. Both concepts can be found in case law of the CJEU and in EU consumer legislation. The CJEU initially introduced the notion of the

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<sup>14</sup> Directive 2011/83/EU on consumer rights and Directive 2023/2673/EU on the distance marketing of consumer financial services.

<sup>15</sup> Directive 93/13/EEC on unfair terms in consumer contracts.

<sup>16</sup> Directive 2005/29/EC concerning unfair business-to-consumer commercial practices.

<sup>17</sup> Directive 2006/114/EC concerning misleading and comparative advertising.

<sup>18</sup> Directive 2023/2225/EU on credit agreements for consumers.

<sup>19</sup> Directive 2015/2302/EU on package travel and linked travel arrangements.

<sup>20</sup> Directive 2024/2853/EU on liability for defective products.

<sup>21</sup> See for example, N Reich and H-W Micklitz, ‘Economic law, consumer interests and EU integration’ in N Reich et al (eds), *European Consumer Law* (Intersentia, 2014) 1, p 21.

<sup>22</sup> Albeit one that it is not necessarily shared across Member States.

<sup>23</sup> Article 2(1), Consumer Rights Directive 2011/83/EU.

<sup>24</sup> For example in the See V Mak, ‘Consumer Protection’ in *The Oxford Encyclopedia of EU Law*, para 7 (available at: <https://opil.ouplaw.com/display/10.1093/law-oeel/law-oeel-e127>).

average consumer as “reasonably circumspect”,<sup>25</sup> which it developed further as the “reasonably well informed and reasonably observant and circumspect” in the *Gut Springenheide* case.<sup>26</sup> The CJEU’s development of the average consumer concept aimed to allow national courts to determine objectively whether a communication is misleading to a consumer without engaging in a subjective evaluation of the case and position of the parties.<sup>27</sup> EU consumer legislation may also recognise that – when providing information to consumers – traders should take into account the reasonably foreseeable vulnerabilities of certain consumers; for example, the Consumer Rights Directive 2011/83/EU makes reference to “the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity”.<sup>28</sup>

### Information Obligations in the Consumer Rights Directive 2011/83/EU

The Consumer Rights Directive 2011/83/EU establishes information obligations for traders in respect of consumer contracts. In respect of both Articles 5 and 6, the trader should provide the consumer with certain information (set out in those provisions, and including, for example, information on the main characteristics of the goods or services, the identity of the trader, price and any right of the consumer to withdraw); this information should be provided “in a clear and comprehensible manner, if that information is not already apparent from the context”.

## EU Consumer Law and Linguistic Provisions

### The Tension between the Territorial Competence of the Member States and Consumer Protection

In line with the territoriality principle, Member States are competent to make provision for the use of language within their territory to ensure, for example, that consumers within their territory are provided with information to ensure they are effectively protected. However, this national law may conflict with primary and secondary EU law which impedes free movement; that is to say, national provisions requiring that information is provided in a particular language may undermine the freedom of language of businesses (including producers and manufacturers) by impeding their opportunities to market their products on the EU internal market. Such provisions may therefore

<sup>25</sup> Case C-470/93 *Mars* EU:C:1995:224, para 24, a case concerning free movement of goods, measures having an effect equivalent to quantitative restrictions, price fixing and misleading statements to consumers (+10% wrappers on confectionary).

<sup>26</sup> Case C-210/96 *Gut Springenheide* EU:C:1998:369, para 31, concerning additional statements on eggs designed to promote their sale.

<sup>27</sup> The average consumer concept has since been explicitly used in EU consumer legislation; for example the Unfair Commercial Practices Directive 2005/29/EC, recital 18 and Article 5(2), referring to the consumer who is “is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors”.

<sup>28</sup> Recital 34, Consumer Rights Directive 2011/83/EU. The taking into account of such vulnerabilities however, should not lead to different levels of protection for different consumers. Similar provision is made in recitals 18 And 19 and Articles 5(2) and (3), Unfair Commercial Practices Directive 2005/29/EC. This is recognised at Article 111-2(c), Catalan Consumer Code, 22/2010, of 20 July.

constitute barriers to trade, unless justified.<sup>29</sup> This is essentially the key tension between national sovereignty and the development of the internal market.

### Provisions on Language in the Consumer Rights Directive 2011/83/EU

The Consumer Rights Directive 2011/83/EU makes little provision on linguistic requirements. It essentially maintains the above-mentioned national sovereignty in both recital 15 and Article 6(7): the Directive does not harmonise language requirements in relation to consumer contracts, thus allowing Member State to either maintain or introduce language requirements in order to ensure the information provided by traders is easily understood by consumers. If secondary EU law provides that information is to be provided in more than one official language of a Member State, for example, where this is not done, the Member State will be in violation of EU law.<sup>30</sup> As the Consumer Rights Directive 2011/83/EU does not preclude provisions such as those found in the Catalan Consumer Code, these provisions would be compliant with that Directive. However, these provisions may undermine consumer protection generally – including as established in Article 37 Charter of Fundamental Rights – as the provision of information only in Catalan would undermine the possibility for non-Catalan speakers to “easily understand” this information (and exercise their freedom of choice, as outlined above). If consumers in Catalan are provided with information both in Castilian and Catalan, however, such an issue would not arise (at least with regards to Spanish citizens).

### Case Law of the European Court of Justice on Linguistic Requirements

The European Court of Justice (hereinafter ECJ) recognises the tension between the sovereignty of the Member States to establish linguistic regimes within their territory (including for the purposes of consumer protection) and the scope for such linguistic regimes to restrict free movement (and the facilitation of the internal market) as established in primary and secondary EU law. The ECJ has recognised the cultural aspects of consumer protection; it has held, for example, that “it must be determined whether social, cultural or linguistic factors” may provide for a particular national understanding of a product, and on this basis, a necessarily local-specific level of consumer protection, in the context of a case concerning potentially misleading trademarks.<sup>31</sup>

The ECJ has recognised that linguistic regimes may constitute restrictions to free movement. However, a restriction on free movement may be justified. The ECJ has provided that the defence and promotion of one or more official languages of a Member State may constitute an overriding reason in the public interest which may provide a justification for such a restriction. However, the linguistic regime established at the national level must comply with the principle of proportionality,

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<sup>29</sup> Including Articles 34 and 35 TFEU.

<sup>30</sup> Case C-64/20 *UH v An tAire Taimhaiochta, Bia agus Mara, Eire, An tArd-Aighne* EU:C:2021:207. The case concerned product labelling on pet food (Directive 2001/82/EC), which imposed language requirements in English and Irish.

<sup>31</sup> Case C-220/98 *Estée Lauder* [2000] ECR I-117, paras 27–29: ‘in particular, it must be determined whether social, cultural or linguistic factors may justify the term “lifting”, used in connection with a firming cream, meaning something different to the German consumer as opposed to consumers in other Member States. . .’ – See also Case C-581/13 *Intra-Press* EU:C:2014:2387, judgment, paras 24 et seq., on the issue of language and translation.



that of legal certainty and EU fundamental rights (including Article 37 of the Charter of Fundamental Rights; in this sense, the effective protection of Catalan and non-Catalan consumers).<sup>32</sup>

Proportionality is key. The ECJ has provided that a national “obligation to use a specific language for the labelling of foodstuffs, even if the use of other languages at the same time is not precluded, also constitutes a requirement stricter than the obligation to use a language easily understood”.<sup>33</sup> Indeed, the same reasoning applies to provisions of a regional body of a Member State; in the case of *New Valmar*, the ECJ found that a requirement in Flanders that all firms established within the territory provide for cross-border bills in Dutch (the only official language of Flanders), failing which the bill would be null and void, constituted a barrier to free movement of goods and services. The ECJ further reasoned that while the Flemish state was pursuing a legitimate goal vis-à-vis the protection of linguistic diversity, this provision nevertheless went beyond what is necessary and as such was disproportionate.<sup>34</sup> This seems to provide that a domestic requirement – such as that in the Catalan legislation – to use a particular language for the labelling of food products would be precluded under the relevant secondary EU law, even if the use of another language is not precluded.<sup>35</sup>

Even if the Catalan legislation could be said to be proportionate, the question arises as to whether it undermines a high level of protection for non-Catalan speakers, if information is provided to them only in Catalan. Again, if this information is provided only in Catalan, it is likely that this information will not be “clear and comprehensible” (per Article 5(1) Consumer Rights Directive 2011/83/EU) to non-Catalan speakers; as such, the high level of consumer protection as envisaged in Article 37 Charter of Fundamental Rights would be undermined. Again, this issue would not arise if information was provided in both Catalan and Castilian.

### Requirements on the Imposition of Sanctions in EU Consumer Law

The principle of subsidiarity dictates that the EU is only justified in exercising its legislative competence where the objectives of a proposed action cannot be satisfactorily achieved at the Member State level.<sup>36</sup> As a general rule, and given the EU’s limited competences in the area of civil procedure, the enforcement of consumer law generally falls to the Member States in line with national procedural law. Recital 57 of the Consumer Rights Directive 2011/83/EU provides for this; it is for the Member State to ensure the provisions of the directive are enforced and to set out penalties for violations of those provisions. Per Article 24, these penalties must be effective in terms of remedying the harm caused by the violation, proportionate in respect of the gravity of the violation and dissuasive in terms of future violations.<sup>37</sup> The provisions of the Catalan Consumer Code

<sup>32</sup> Case C-222/07 *UTECA* EU:C:2009:124, para 27.

<sup>33</sup> Here the case concerned Directive 79/112; Case C-85/94 *Groupeement des Producteurs, Importateurs et Agents généraux des Eaux Minérales Etrangères, VZW (Piageme II) et a. v. Peeters NV* EU:C:1995:312, para 18.

<sup>34</sup> Case C-15/15 *New Valmar BVBA c. Global Pharmacies Partner Health Srl* EU:C:2016:464, paras 41 and 54.

<sup>35</sup> See also C-366/98 *Yannick Geffroy et Casino France SNC* EU:C:2000:430, para 28.

<sup>36</sup> Art. 5(3) TEU; see the criteria in Protocol (No 2) on the application of the principles of subsidiarity and proportionality annexed to the Treaties.

<sup>37</sup> It is worth noting that the ECJ, while having discussed these concepts, often leaves their application to the Member States themselves; see, for example, Case C-42/15 *Home Credit Slovakia a.s.* EU:C:2016:842, para 67 in which the

establish a regime for the application of these sanctions; per Article 332-2, violations of Article 128-1 would constitute a “minor offence”, sanctioned by a fine of up to<sup>38</sup> 10,000 Euros<sup>39</sup> with territorial and subject-matter jurisdiction) to be exercised by public consumer bodies, agencies of the Government of Catalonia or the Catalan Consumer Agency, if the offence has an impact across more than one Catalan territory.<sup>40</sup>

## Conclusions on the Compliance of the Provisions in the Catalan Consumer Code with EU Consumer Law

As above, three questions have been identified: 1) whether these provisions of the Catalan Consumer Code requiring the provision of information to consumers in Catalan are compliant with EU law principles of consumer protection, particularly the Consumer Rights Directive 2011/83/EU; 2) whether the provisions are compliant with the objectives of consumer protection; and 3) whether the information obligations established in the Catalan Consumer Code offer a suitable level of consumer protection to both Spanish speakers and non-speakers of Catalan on the territory of the Autonomous Community of Catalonia. As to question 1), the Consumer Rights Directive 2011/83/EU does not establish any requirements as to language but leaves this to the Member States; however, these provisions of the Catalan Consumer Code may constitute a barrier to free movement principles.

As to 2) and 3) as the Consumer Rights Directive 2011/83/EU does not preclude provisions such as those found in the Catalan Consumer Code, these provisions would be compliant. However, these provisions may undermine consumer protection generally – including as established in Article 37 Charter of Fundamental Rights – as the provision of information only in Catalan would undermine the possibility for non-Catalan speakers to “easily understand” this information (and exercise their freedom of choice, as outlined above). If consumers in Catalonia are provided with information both in Castilian and Catalan, however, such an issue would not arise (at least with regards to Spanish citizens).

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ECJ considers that a remedy for a failure to include mandatory information in a consumer credit contract may be effective and dissuasive but not proportionate depending on specific circumstances.

<sup>38</sup> The amount of fine is to be determined in line with Article 333-2, Law 22/2010 of the 20 July.

<sup>39</sup> Per Article 333-1(1)(a), Law 22/2010 of the 20 July. Per Article 333-1(2), additional sanctions – both monetary and reputational – can also be imposed; these may include the confiscation and destruction of goods, temporary closure of the business in violation, public rectification and publication of the penalty.

<sup>40</sup> Per Article 312-10 and Article 312-11, Law 22/2010 of the 20 July.



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