

Consumer information Standard according to EU and Georgian Laws

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Abstract: *The protection of consumer rights is one of the most pressing issues in modern law. The law on consumer rights protection originates¹ from contractual law, which itself is based on the principles of equality and freedom of contract. The principle of freedom of contract means that each party in civil transactions, including the consumer and the entrepreneur, has an equal opportunity within its private autonomy, to enter into any contract with content that is not prohibited by law,² to freely choose a contracting party³, and to freely bargain and create the terms of the contract. However, due to the specifics of civil relations, the parties are not always absolutely equal and free.*

This situation becomes evident when the contracting parties are an entrepreneur and an individual, a consumer who requires the contract subject or service to meet personal needs, rather than for business, professional, or craft purposes. Consumer doesn't have field-specific knowledge and experience (nor should they have) thus they are easily influenced by the proposals offered by the entrepreneurial entity. In such cases, entrepreneurs have a greater responsibility to demonstrate good faith and honesty.

Keywords: *consumer; trader; EU directive; awareness; Court of Justice of the European Union.*

1. INTRODUCTION

“Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision.”

(John F. Kennedy, March 15, 1962)

Based on the Association Agreement with the European Union⁴, the Parliament of Georgia adopted the law "On the Protection of Consumer Rights⁵" on March 29, 2022, which aims to define the concept of a consumer and establish a culture of behavior where consumers are respected. The Association Agreement between Georgia and the European Union⁶ outlines the importance of ensuring a high level of consumer protection and cooperation in terms of ensuring compatibility between their consumer protection systems.

One of the key rights of the consumer is the right to be informed. The European Parliament and Council Directive 2011/83/EU⁷ of October 25, 2011, as well as Georgian legislation, includes a

¹ Norbert Reich, „Protection of Consumers' Economic Interests by EC Contract – Some Follow-up Remarks.“ In *Sydney Law Review*, Vol., 28: 37, 2006, 38. 54.

² Lado Chanturia, *General Part of Civil Law*, Law, Tbilisi, 2011, pages 90-94

³ Besarion Zoidze, *Reception of European Private Law in Georgia*, Publishing Training Center, Tbilisi, 2005, page 4

⁴ Association Agreement between Georgia, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part. 27.06.2014, <https://matsne.gov.ge/ka/document/view/2496959?publication=0> accessed: 20.11.2024

⁵ Parliament of Georgia, Law of Georgia “On Protection of Consumer Rights”. Article 1, 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 19.11.2024

⁶ Association Agreement between Georgia, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part. 27.06.2014, <https://matsne.gov.ge/ka/document/view/2496959?publication=0> accessed: 20.11.2024

⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing

list of information that the trader is obligated to provide to the consumer before concluding the contract.

The imperative provisions regarding the obligation to provide information ensure the consumer's right to make an "informed decision" before acquiring goods or services.

This thesis aims to determine the compliance of Georgian and European Union laws in terms of provision of information in consumer relations.

2. PARTIES TO A CONSUMER CONTRACT

For a contract to become a Consumer-based contract, it must meet certain preconditions. Article 2, Paragraph 1 of the Georgian Law "On Consumer Rights Protection" states the following: "This Law determines general principles for the protection of the rights of consumers who establish legal relations with a trader with a view to consuming the trader's goods or services for personal purpose⁸. From this definition, the preconditions that transform a contract into a consumer contract are evident. There must be a trader, on one side, and a consumer, on the other side.

2.1. consumer

Defining the concept of a consumer is extremely important in consumer relations⁹. It is around the concept of the consumer that the legislation regulating consumer relations is created¹⁰. According to Subparagraph (i) of Article 4 of the law, a consumer can only be a natural person. The law does not recognize a legal entity or an unregistered community of individuals as a consumer. For a person to be considered a consumer, it is not enough for him/her to be a natural person. The concept of a consumer includes two cumulative conditions: I) the person must be a natural person; II) the person must be acting outside his/her professional activity. This is how the concept of a consumer is defined in Paragraph 17¹¹ of the Preamble of the European Parliament and Council Directive 2011/83/EU of October 25, 2011.

When discussing the concept of a consumer, it is interesting to look at the decision of the Court of Justice of the European Union (CJEU) in the case C-329/19, *Condominio di Milano (Milan Association)*¹². In this decision, the court clarified that under case law of national courts, the concept of "consumer" may be extended in a way that does not refer solely to natural persons. This interpretation, however, is less applicable to the Georgian context, as the law imperatively defines a consumer as a natural person¹³. The aforementioned court decision can serve as a guideline when

Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 20.11.2024

⁸ Parliament of Georgia, Law of Georgia "On the Protection of Consumer Rights". Article 1, 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 20.11.2024

⁹ Zurab Gvelesiani, *The Necessity of Consumer Law For Effective Competition and a More Robust Enforcement of Competition Law: A Comparative Analysis of the EU and Georgian Legal Systems*. budapest.2017. pp. 177.

¹⁰ Parliament of Georgia, Law of Georgia "On the Protection of Consumer Rights". Article 1, 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 20.11.2024

¹¹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 20.11.2024

¹² EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights*, Official Journal of the European Union 2021. pp. 6.

¹³ According to the article 4 subparagraph i) of Law of Georgia "On the Protection of Consumer Rights" consumer is any natural person who is offered goods or services, or who purchases or further consumes goods or services exclusively for private purposes and not for performing any commercial practice or industrial activity, crafting or other occupational activities.

determining whether the consumer has a personal interest or commercial interest to the contract. According to Paragraph 2 of the Article 2 of the Georgian Law "On Protection of Consumer Rights," the law applies to situations where the consumer's personal interest takes precedence over the commercial interest. Furthermore, according to the second sentence of this paragraph, if it is unclear which interest takes precedence, the matter should be resolved in favor of the consumer, and it shall be deemed that the personal interest is predominant.¹⁴ In the same decision by the Court of Justice of the European Union, the issue is further clarified regarding how this matter should be decided. According to the ruling, when a consumer is driven by both personal and professional (commercial) interests, for the person to be considered a consumer, taking into account the overall context of the contract, the commercial interest shall be limited and shall not take precedence¹⁵ over the personal interest. Pursuant to the European Parliament and Council Directive 2011/83/EU on the Protection of Consumer Rights, the assessment of a consumer's contractual interest shall be carried out on an individual basis in each specific case.¹⁶

2.2. Trader

In the European Union, the regulatory acts governing the provision of information are the European Parliament and Council Directive 2011/83/EU of October 25, 2011, as well as the European Parliament and Council Directive 2005/29/EC of May 11, 2005, which regulates unfair commercial practices in business-to-consumer relations. Unfair commercial practices are significantly related to the obligation to provide information, which will be discussed in more detail below. In this case, these acts are referenced to illustrate that both independently define the concept of a trader. Article 2 of the European Parliament and Council Directive 2011/83/EU of October 25, 2011, lists the definitions of the terms used in the directive. According to paragraph 2 of this article of this Directive, a 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive"¹⁷. Concerning the Directive 2005/29/EC of May 11, 2005, article 2 of this legal act also provides the definitions of the terms used in the directive,¹⁸ according to which, a 'trader' means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft, or profession and anyone acting in the name of or on behalf of a trader'. The aforementioned provisions clearly show that these definitions are not significantly different from each other, and both directives essentially define the concept of a trader in the same way. Therefore, even though the concept of a trader is independently defined in two normative acts, they are not distinct. The Georgian normative definition directly mirrors the definition of a trader as outlined in the above directives. In

¹⁴ Parliament of Georgia, Law of Georgia "On the Protection of Consumer Rights". Article 2 paragraph 2 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 20.11.2024

¹⁵ EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights*, Official Journal of the European Union 2021. pp. 6.

¹⁶ Ibid.

¹⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, Article 2, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 20.11.2024

¹⁸ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance), 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 20.11.2024

terms of normative content, according to the EU directives, the trader is qualified not only by the purpose of their activity but also by the object of their activity.^{19 20} In Georgia, the legal definition of a commercial activity refers to any action, inaction, behavior, explanation, or commercial communication by the trader, including advertising and marketing, that is directly related to the sale or provision of goods or services to the consumer or the promotion of such sales.²¹ Furthermore, goods are defined as any movable thing, as well as any material goods placed therein and/or disseminated in a digital form²². Therefore, even though the concept of a trader is defined similarly in both Georgian and European legislations, it cannot be considered synonymous. The Georgian definition of a trader matches the definition provided in Directive 2011/83/EU, but it does not align with the definition in Directive 2005/29/EC. The latter includes immovable property as part of the subject of consumer relations. This discrepancy can be seen as a shortcoming of Georgian legislation, as the law regulates unfair commercial practices but excludes relationships involving immovable property outside its scope. In contrast, EU legislation extends the norms regulating unfair commercial practices to include immovable property too.

It is worth to mention the decision C-105/17 of CJEU. The court shared the opinion of the Advocate Generale.²³

whether the sale was carried out in an organised manner; whether that sale was intended to generate profit; whether the seller had technical information and expertise relating to the products which they offered for sale which the consumer did not necessarily have, with the result that the seller was placed in a more advantageous position than the consumer; whether the seller had a legal status which enabled them to engage in commercial activities; to what extent the sale was connected to the seller's commercial or professional activity; whether the seller was subject to VAT; whether the seller, acting on behalf of a particular trader or on his/her own behalf or through another person acting in his/her name and on his/her behalf, received remuneration or an incentive; whether the seller purchased new or second-hand goods in order to resell them, thus making that a regular, frequent and/or simultaneous activity in comparison with their usual commercial or business activity; whether the goods for sale were all of the same type or of the same value; and whether the offer was concentrated on a small number of goods.

The court mentioned that these criteria are neither exhaustive nor exclusive.²⁴ Additionally court defined that compliance with one or more of the criteria is not sufficient,

¹⁹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, Article 2, paragraph (3), 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 20.11.2024

²⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance), Article 2, Subparagraph (c), 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 20.11.2024

²¹ Parliament of Georgia, Law of Georgia "On the Protection of Consumer Rights". Article 4, subparagraph z) 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 20.11.2024

²² Ibid.

²³ Komisia za zashtita na potrebitelite v Evelina Kamenova (C-105/17) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CJ0105> accessed: 29.11.2024

²⁴ Ibid.

by itself, to classify that person as a ‘trader’²⁵. The court mentioned that circumstance in which natural person publishes advertisements by which he/she offers consumers goods, isn’t enough to classify that person as a “trader”.²⁶ In the end court mentioned that national court should determine whether or not person is a trader if he is acting for purposes relating to his trade, business, craft or profession.²⁷

3. CERTAIN ASPECTS OF THE OBLIGATION TO PROVIDE INFORMATION UNDER EU AND GEORGIAN LAWS

The list of information to be provided by the trader to the consumer is quite extensive under both the European Union and Georgian laws. This article will focus on a few of them.

The guidance of the European Parliament and the Council's Directive 2011/83/EU of October 25, 2011, explains what is meant by information that is ‘*already apparent from the context*’. According to the definition, such information may include the trader's shop address when the consumer purchases goods at the trader's premises rather than remotely²⁸. This type of information is already apparent and does not require explicit indication by the trader.

The decision of the Court of Justice of the European Union of July 10, 2019, in case C-649/17, is worth mentioning. In this case, the Court made an interpretation of Article 6(1)(c) of Directive 2011/83/EC of the European Parliament and the Council of October 25, 2011, according to which, a trader has an obligation to provide its contact information (telephone and fax number) to the consumer only when the trader has such means of communication.²⁹ The Court explained the essence of Article 6 of the Directive, stating that the provision serves to the protection of consumer rights. The consumer, based on the information received in advance, has the ability to decide whether to restrain himself from entering into a contractual relationship with a particular trader through an agreement or not³⁰. The Court explained that direct and effective communication is important for protecting consumer rights. Additionally, the Court pointed out that there must be a balance between the obligation to provide information and the protection of consumer rights, on the one hand, and the competitiveness³¹ of undertakings, on the other. Obliging each and every trader to provide a telephone number to consumers would be disproportionate, especially for small undertakings who may be trying to reduce operational costs, including, by conducting business at a distance or off-premises³². The current provision of the Directive does not require traders to have separate communication methods for consumers³³. According to the Court's interpretation, the entry in the Directive does not prevent traders from having a means of communication other than a telephone, fax, or email. The fact that a consumer has to perform more than one action (such as clicking the appropriate button) on the trader's website

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights*, Official Journal of the European Union 2021. pp. 23

²⁹ Verbraucherzentrale Bundesverband eV v Amazon EU Sàrl.(C-649/17) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CJ0649> accessed: 24.11.2024.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Verbraucherzentrale Bundesverband eV v Amazon EU Sàrl.(C-649/17) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CJ0649> accessed: 24.11.2024.

does not, in itself, imply that the information is provided in a vague or unclear manner.³⁴ The provision of the current Directive should be interpreted in such a way that, when a trader sells remotely, the national legislation shall not oblige him to provide a telephone number³⁵ to the customer. Furthermore, the trader is not required to have a separate communication method for trading purposes to contact consumers.³⁶

It is important to note the decision of the Court of Justice of the European Union from June 28, 2007, in case C-73/06. In this decision, the Court explained what is meant under “the place of the business”, which is mandatory information to be provided to the consumer. According to the Court, the determination of a company’s place of business requires a series of factors to be taken into consideration, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is determined. Other factors, such as the place of residence of the main directors, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the company’s financial, and particularly banking, transactions mainly take place, may also need to be taken into account³⁷. Pursuant to Georgian legislation, in distance contracts, the consumer shall be provided with information about the factual address if it is different from the legal address.³⁸

Like the European Union Directive, Georgian law separately outlines the information that a trader must clearly and understandably provide to the consumer for contracts concluded at a distance or off-premises, including information about the right of withdrawal from the contract or any limitations or prohibitions on this right. Georgian and EU legislation align in terms of mandatory information requirements. It is worth noting, however, that the provisions of Georgian law are more conditional in nature than those of the EU, and only under certain conditions it obliges the trader to provide this information to the consumer. For instance, the sub-paragraph “b” of Article 5 of Georgian Law concerns provision of information to the consumer about the communication means, identity and the address of the trader. The first sentence of this paragraph – “the identity (name) and address (legal address) of the trader” is imperative in nature. The identity and address of the trader are essential pieces of information that a consumer needs in order to know with whom they are entering into a contract and, if necessary, where to contact the trader. Regarding the second sentence of this provision, it is conditional in nature, as the trader is only required to provide contact information when they have such means of communication available. According to Article 5(b) of Directive 2011/83/EC, the trader's telephone number is considered mandatory information to be provided. The availability of a telephone number ensures efficient and fast communication between the trader and the consumer. Based on the above, it is likely that the trader could indicate not only a telephone number but any other effective and fast communication method; in any case, having an efficient means of communication is essential for the trader. Georgian legislation treats the provision of any contact information as non-mandatory, requiring the trader to provide such information only if it exists. From the perspective of effectively protecting consumer rights, this could be seen as a shortcoming. If

³⁴ Verbraucherzentrale Bundesverband eV v Amazon EU Sàrl.(C-649/17) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CJ0649> accessed: 24.11.2024.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Planzer Luxembourg Sàrl v Bundeszentralamt für Steuern (C-73/06) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62006CJ0073> accessed: 25.11.2024

³⁸ Parliament of Georgia, Law of Georgia “On the Protection of Consumer Rights”. 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 26.11.2024

consumers have to visit the trader's premises every time to clarify any issue or even file a complaint, it will be an obstacle to exercising their rights.

4. RELEVANCE OF THE OBLIGATION OF INFORMATION PROVISION TO MISLEADING OMISSION

“Informed Consumer” is the foundation of consumer relations. Given that the consumer and the trader have different capabilities, considering their social, economic, or sectoral knowledge, the law on the protection of consumer rights aims to balance the inequality between the parties by granting certain rights to the consumer. On the one hand, some rights are granted to the consumer, while on the other hand, the trader is loaded with obligations with an idea to show consideration for the consumer. The consumer is the weaker party in the transaction with the trader, considering their bargaining power and level of knowledge.³⁹ Therefore, according to the consumer rights law, the trader must perform some practical actions. Based on this, consumer protection legislation imposes a certain practical obligation on the trader. In one case, the obligation to provide information may be considered a breach by the trader, while on the other hand, it may be seen as a misleading omission. According to article 26(5) of the Georgian Law on Protection of Consumer Rights: “the non-fulfillment of the obligation to deliver information provided for by Articles 5, 6 and Articles 9 to 12 of this Law shall be also deemed a misleading commercial practice resulting from omission.” The aforementioned articles, in turn, impose the obligation on the trader to provide certain information. Thus, the question arises: if the trader does not provide information about his identity to the consumer, should the relevant agency consider this only as a violation of the obligation to provide information or as misleading commercial activity resulting from omission? Under EU Law, Provision of information to the consumer at the pre-contractual stage is regulated by the European Parliament and Council Directive 2011/83/EU of October 25, 2011.⁴⁰ On the other hand, unfair commercial practices in business-to-consumer relations are regulated by the European Parliament and Council Directive 2005/29/EC of May 11, 2005⁴¹. These directives address various issues, but in the case under consideration, attention should be given to the relation between Articles 5 and 6 of Directive 2011/83/EU and Article 7 of Directive 2011/83/EU. The mentioned articles of Directive 2011/83/EU list the information to be provided to the consumer at the pre-contract stage, while according to Directive 2011/83/EU, it is a misleading omission if the average consumer is not provided with all essential information needed to make an informed decision, and as a result of the absence of this information, the consumer makes a decision they would not have made otherwise. According to the directive, all relevant circumstances should be taken into account when addressing this issue.”

It is clear that there is an overlapping connection between Directive 2011/83/EU and Directive 2005/29/EC. Articles 5 and 6 of Directive 2011/83/EU outline and list the information that must be provided to the consumer at the pre-contractual stage, when no contractual binding has yet occurred

³⁹ *Horățiu Ovidiu Costea v SC Volksbank România SA.* (C-110/14) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0110> accessed: 25.11.2024

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 17.11.2024

⁴¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (“Unfair Commercial Practices Directive”) (Text with EEA relevance. 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 17.11.2024

between the parties.⁴² This is explicitly stated in the first paragraphs of the relevant articles, both of which begin with the following sentence: “Before the consumer is bound by...”.⁴³ Based on the content of Article 7, paragraph 1 of Directive 2005/29/EC, an action that influences the consumer’s ability to make an informed decision is classified as a legal violation.⁴⁴ The decision of the Court of Justice of 19 December 2013, C-281/12, where the Court explains that “transactional decision” must be interpreted broadly⁴⁵. According to the same decision, the Court clarifies that “transactional decision” may include, among other things, the entry of the consumer into a transaction.⁴⁶ Therefore, the provisions regulating unfair commercial practices have a much broader scope of application than the mandatory norms on the provision of information. The pre-contractual stage is the phase of the relationship between the consumer and the trader during which these two regulatory norms overlap.⁴⁷ However, it should be noted that the regulatory norms on unfair commercial practices are generally of a broad nature in terms of their content. The regulatory norms governing pre-contractual relationships regulate the pre-contractual stage in a more specific and detailed manner. Therefore, at a first glance, it could be said that if the trader has provided the consumer with all the information required under the norms regulating the pre-contractual relationship, this action would also fulfill the requirements⁴⁸ for misleading omission. So where is the line between the failure to provide information and misleading commercial practices? This question becomes even more relevant when we consider the provisions governing the obligation to provide information in both the European Union and Georgian contexts. Specifically, Articles 5 and 6 of Directive 2011/83/EU include the phrase ...in a clear and comprehensible manner... . In Georgia's Law on the Protection of Consumer Rights, two key Articles regulating the obligation to provide information can be highlighted: Articles 5 and 10. The first paragraph of Article 5 ends with the following statement: ..”provide the following reliable and complete information to a consumer in a clear and understandable manner.” As for the first paragraph of Article 10, it also has a similar formulation:”provide a consumer with the following additional information, in a clear and comprehensible manner.”⁴⁹ According to Article 26(2) of the law, “a commercial practice resulting from the omission of a trader shall be deemed misleading when the material information referred to in paragraph 1 of this article is delivered by the trader to a consumer in a vague, uncertain or untimely manner or where commercial intent can be identified in the commercial practice, or be proven by circumstances, and based on which the consumer concludes or may conclude a transaction which he/she would not have concluded

⁴² Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0083-20220528> accessed: 17.11.2024

⁴³ Ibid. First paragraphs of Articles 5 and 6.

⁴⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (“Unfair Commercial Practices Directive”) (Text with EEA relevance), 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 17.11.2024

⁴⁵ Trento Sviluppo srl and Centrale Adriatica Soc. coop. arl v Autorità Garante della Concorrenza e del Mercato (C-281/12) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62012CJ0281> accessed: 17.11.2024

⁴⁶ Ibid.

⁴⁷ EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*, Official Journal of the European Union 2021. pp. 12.

⁴⁸ EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights*, Official Journal of the European Union 2021. pp. 22.

⁴⁹ Parliament of Georgia, Law of Georgia “On the Protection of Consumer Rights”. 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 17.11.2024

otherwise.⁵⁰ Paragraph 2 of the Article 7 of EU Directive 2005/29/EC has the same content.⁵¹ Therefore, the issue of differentiation is relevant both in the European Union and in Georgia. In the 2005/29/EC guidelines, it is stated that although the present directive and Directive 2011/83/EU overlap, the 2005/29/EC directive will still be relevant for assessing misleading or aggressive commercial practices, including, in terms of the information provided and the form⁵² in which it is delivered. In this context, it is important to note that the failure to provide information *per se* is a legal violation, whereas misleading omission is a result-oriented violation, because one of the following results must occur: the consumer should take a transactional decision that he would not have taken otherwise.⁵³ ⁵⁴However, it is important to note that, according to both EU and Georgian legislation, it is not necessary for the consumer to actually make a decision in order for the action to be assessed as an unfair commercial practice. Instead, if the action gives rise to the presumption that the consumer would have take a transactional decision (*in abstracto*), the action is considered unfair⁵⁵. Therefore, although the existence of an action is required for an unfair commercial practice, it still appears to be subject to evaluation.

Ultimately, it can be said that the relevant authority will have to decide on a case-by-case basis whether the trader has violated the obligation to provide information or engaged in misleading omission. For this purpose, the authority should apply the “transactional decision test”.⁵⁶ If the authority determines that the action could have misled the consumer, then the trader should be classified as having engaged in unfair commercial practices. However, if such an outcome could not have occurred by non-provision or insufficient provision of information, then it can be deemed only a violation of the obligation to provide information.

5. CONCLUSION

Parties of consumer relationships need to earn trust, which can be developed by many factors, but information and its clarity are among the most important. According to Georgian legislation, the obligation may give rise to the party of the specific deal to obtain information⁵⁷. The obligation to

⁵⁰ Ibid.

⁵¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (Text with EEA relevance), 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 17.11.2024

⁵² EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*, Official Journal of the European Union 2021. pp. 12.

⁵³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (Text with EEA relevance). 2005. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0029-20220528> accessed: 17.11.2024

⁵⁴ Parliament of Georgia, Law of Georgia “On the Protection of Consumer Rights”. 29.03.2022, <https://matsne.gov.ge/ka/document/view/5420598?publication=3> accessed: 17.11.2024

⁵⁵ EUROPEAN COMMISSION, *Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*, Official Journal of the European Union 2021. ოპ. 32.

⁵⁶ Ibid. pp. 30.

⁵⁷ Parliament of Georgia, Law of Georgia “ Civil Code of Georgia”. 1997, Article 318. [<https://matsne.gov.ge/ka/document/view/31702?publication=132>] accessed: 25.11.2024

actively seek information lies with the party that wishes to obtain it, which may be a legitimate provision in certain cases. However, when there is an obvious imbalance between the parties' capabilities and bargain power, placing a burden on the weaker party to act and obtain information would be unreasonable. For this reason, both European and Georgian laws impose an obligation “to act” on the trader—the stronger party in the transaction—and require them to provide the information necessary for the consumer to make an “informed decision”, regardless of whether the consumer explicitly requests it or not.

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