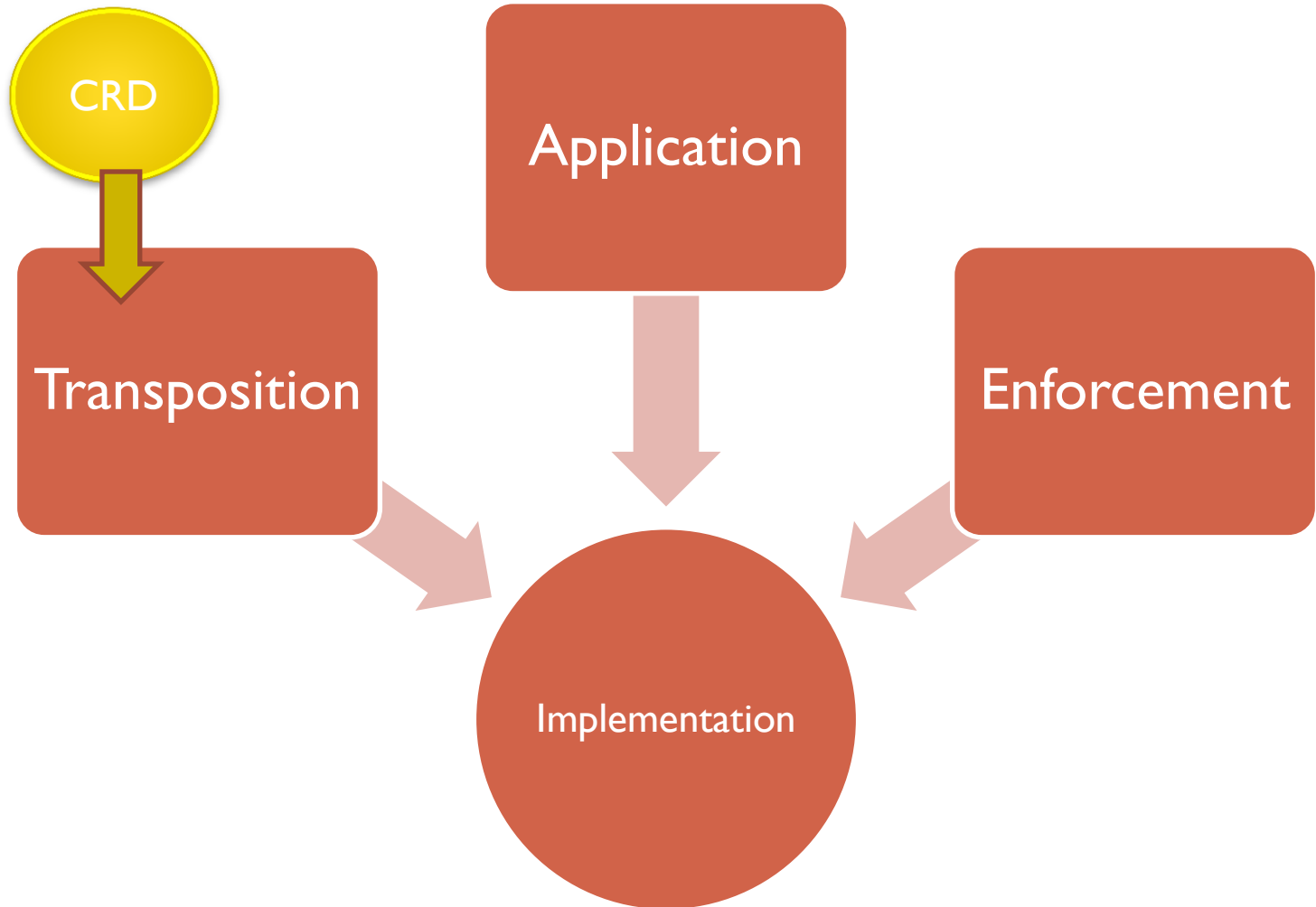


Dr. Danguolė Bublienė



THE IMPLEMENTATION OF THE CONSUMER RIGHTS DIRECTIVE: KEY ISSUES

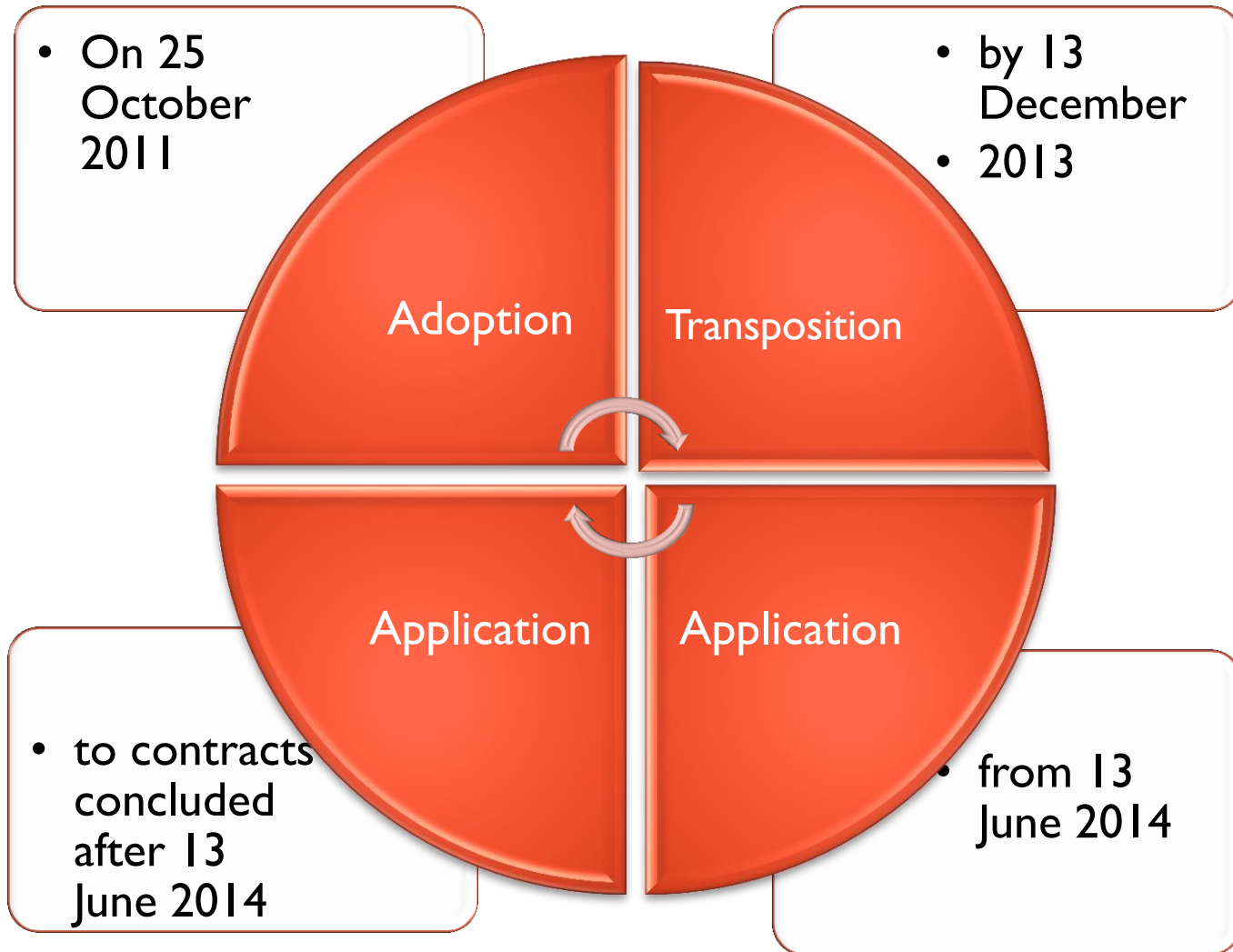
The stages of the implementation of the directives into the national law



Content

- General overview of the CRD and the situation with the implementation of the CRD
- The key elements of the CRD
- The issue of transposition of the CRD into the national legislation technique
- The issues related to some key elements of the CRD

General overview of the CRD



The meaning of the “Contracts concluded after 13-06-2013”?

- Shall the CRD apply to the contract:
 - which will be signed before that date, however, has the condition about its implementation/coming into force after 13 June 2014?
 - will be concluded before 13 June 2014, however, the parties will decide to prolong the term of the contract after the mentioned term?
 - where the parties will agree on all terms and conditions before 13 June 2014, however, for some reasons the signing of the contract will be postponed for several days and the parties will sign the contract after 13 June 2014?
- “the contracts concluded” = the contract shall become legally binding upon the parties

Member State	The law is adopted	Draft is prepared
1 Austria		+
2 Belgium		+
3 Bulgaria		+
4 Croatia		under preparation
5 Cyprus		
6 Czech Republic	+ (adopted new CC)	
7 Denmark		under preparation
8 Estonia		under preparation
9 Finland		+
10 France		+ (Second reading in the Parliament)
11 Germany	+ (not published officially)	
12 Greece	+	
13 Hungary		+
14 Ireland		under preparation

Member State	The law is adopted	Draft is prepared
15 Italy		
16 Latvia		+
17 Lithuania		+
18 Luxembourg		+
19 Malta		+
20 Netherlands		+ (consideration in the Parliament)
21 Poland		+
22 Portugal		
23 Romania		+
24 Slovakia		+
25 Slovenia		+
26 Spain		+
27 Sweden		+
28 United Kingdom		+

The key elements of the CRD (I)

Package Travel Directive (93/11/EEC)

Timeshare Directive (94/47/EC)

Price Directive (98/6/EC)

Injunctions Directive (98/27/EC)

Distance Selling Directive (97/7/EC)

Doorstep Selling Directive (85/577/EEC)

Unfair Terms Directive (93/13/EEC)

Consumer Sales Directive (99/44/EC)

Distance Selling directive (97/7/EC)

Doorstep Selling Directive
(85/577/EEC)

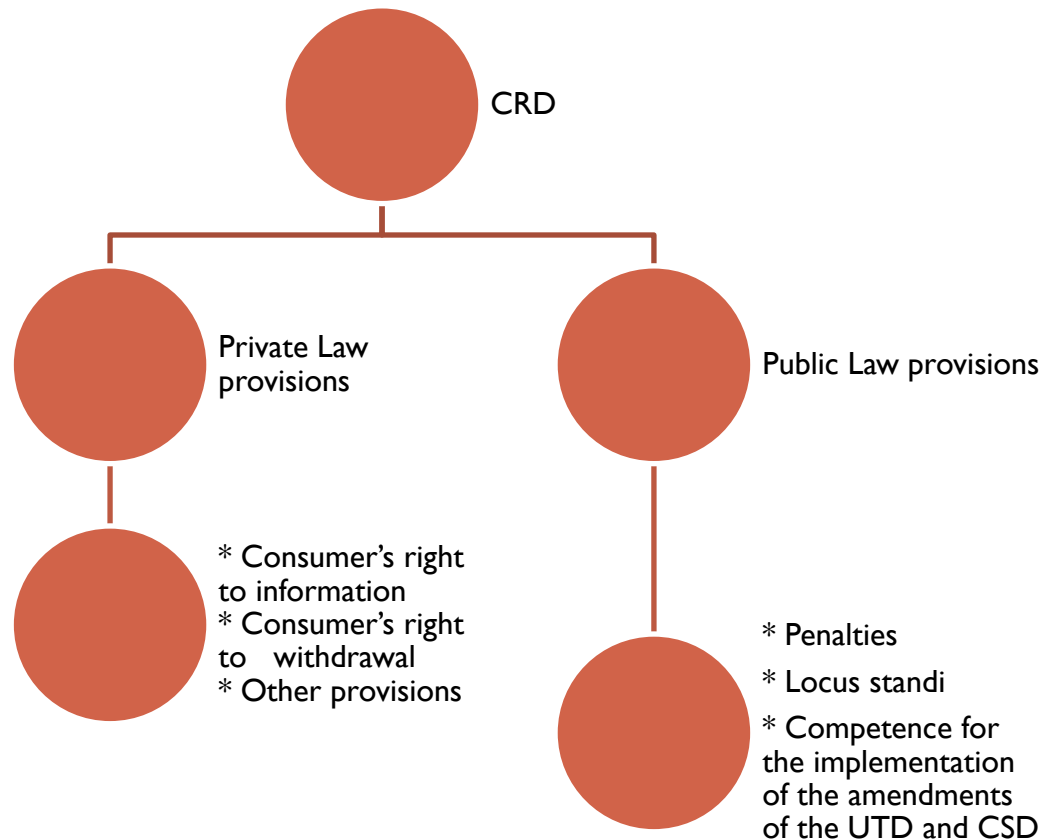
Unfair Terms Directive
(93/13/EEC) Consumer Sales
Directive (99/44/EC) Distance
Selling directive (97/7/EC)

Doorstep Selling
Directive (85/577/EEC)
Distance Selling directive
(97/7/EC)

The key elements of the CRD (II)

- The scope of application of the CRD
- Maximum harmonisation principle
- The consumer's right to information
- The consumer's right to withdrawal
- Other provisions (delivery, passing of risk, payment, other)
- Locus standi
- Effective, proportionate and dissuasive penalties
- The amendments to the Unfair Terms Directive and Consumer Sales Directive

The key elements of the CRD (III)

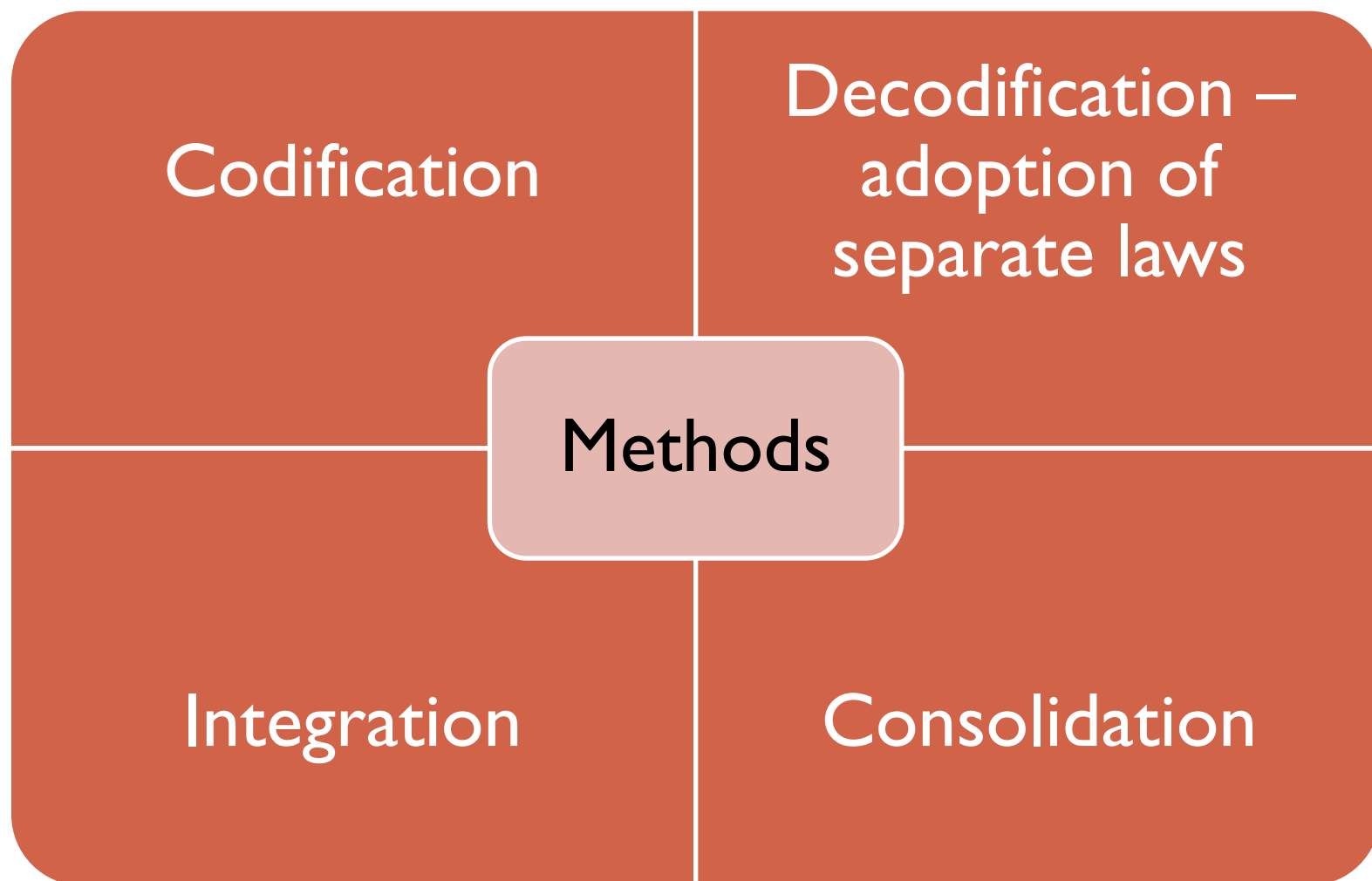


The legislative technique of the transposition of the consumer protection directives before the CRD

- Separate law (legal act) technique (e.g. Cyprus, UK)
- Mixed technique
 - “Umbrella acts” or “Umbrella acts” plus Separate law (legal act) technique
 - “umbrella acts” in essence are two types, such as regulating consumer protection matters or trade (market) practices Act (e.g. Austria; Belgium; Denmark)
 - Civil Code plus Separate law (legal act) technique (e.g. Germany, Netherlands, Hungaria)
 - Civil Code plus “Umbrella acts” plus separate law (legal act) technique (e.g. Czech Republic, Lithuania)
- Integrated technique
 - Consumer code (e.g. France, Italy)

The ways of the implementation of the CRD

The future of the regulation technique in the consumer protection



The scope of application of the CRD (I)

- The CRD encompasses all consumer contracts with a few exceptions

Article 1 Subject matter

The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.

Article 3 Scope

This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer.

- The exceptions are related to the situations
 - Where the relevant provisions are regulated by other European Union Legal acts, e.g. financial services; timeshare contracts, travel package
 - Where the peculiarities of the property have determined the exceptions, e.g. immovable property
 - Where the peculiarities of the services and its public nature which partly are regulated by the European Union law and partly by national law have determined the exceptions, e.g. social services, healthcare services.

The scope of application of the CRD (II)

- The CRD provides the definitions of consumer, trader, sales contract and service contract

Article 2

- (1) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (2) "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;
- (5) "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;
- (6) "service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;

The scope of application of the CRD (III)

- According to the definitions of sales contract and service contract the consumer is only on “demand” side
 - Do the contracts where consumer is on “supply” side fall into the definition of the consumer contract?
 - Are the Member States able to define broader the consumer contract?
- According to the definitions of sales contract and service contract the consumer “pays or undertakes to pay” the price for the goods and services
 - Do the education services where the payment for the education is made by the public funds fall into the scope of the CRD?
 - Are the Member State able to include such services into the consumer contracts?

Maximum (full) harmonisation principle

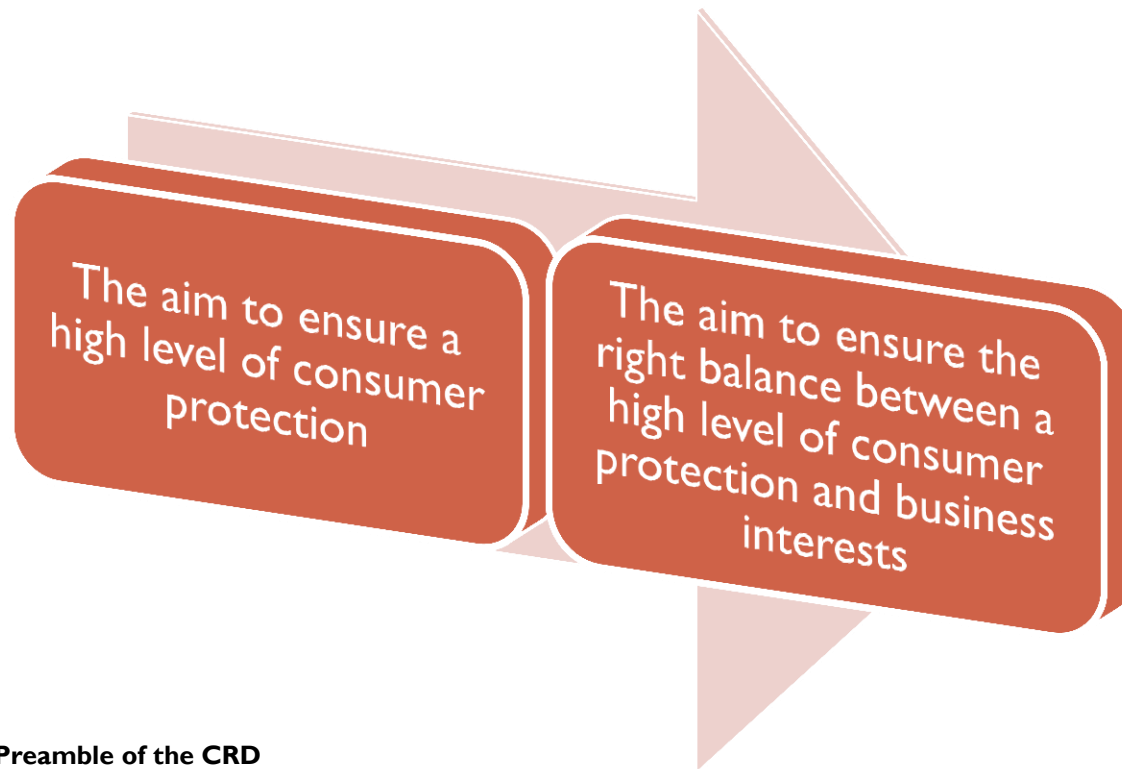
Minimum harmonization

- Directives adopted in 1985 - 2005 (with exception of the Product Liability Directive)

Maximum harmonization

- The new trend after 2005:
 - Unfair Commercial Practices Directive (2005/29/EC)
 - Timeshare Directive (2008/48/EC)
 - Consumer Credit Directive (2008/48/EC)
 - CRD (2011/83/EU)

The maximum harmonisation principle in the CRD (I)



- Preamble of the CRD

- I. (4) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.

The maximum harmonisation principle in the CRD (II)

- Is clearly expressed in the CRD (Art 4)

Article 4

Level of harmonisation

Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.

- Is almost applied to the whole scope of the CRD

The maximum harmonisation principle in the CRD (III)

- Exemptions are made by three ways:
 - By using “may – option” clauses – eight clauses
 - Part 4 of Art 3
 - Part 3 of Art 5
 - Part 4 of Art 5
 - Part 7 of Art 6
 - Part 8 of Art 6
 - Part 4 of Art 7
 - Part 6 of Art 8
 - Part 3 of Art 9
 - By establishing legal rules when the CRD is not applied, e.g. Art 3
 - By providing the explanations (clarifications) in the preamble of the CRD concerning the scope of the CRD, e.g.
 - Para 8 of Preamble
 - Para 13 of Preamble
 - Para 14 of Preamble
 - Para 16 of Preamble
 - Para 17 of Preamble
 - others

“May- options” clauses in the CRD (I)

- **Art 3 Part 4.** Member States may decide not to apply this Directive or not to maintain or introduce corresponding national provisions to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. Member States may define a lower value in their national legislation.
- **Art 5 Part 3.** Member States shall not be required to apply paragraph 1 to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.
- **Art 5 Part 4.** Member States may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies.

“May- options” clauses in the CRD (II)

- **Art 6 Part 7.** Member States may maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer.
- **Art 6 Part 8.** The information requirements laid down in this Directive are in addition to information requirements contained in Directive 2006/123/EC and Directive 2000/31/EC and do not prevent Member States from imposing additional information requirements in accordance with those Directives.

“May- options” clauses in the CRD (III)

- **Art 7 Part 4.** With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed EUR 200:
 - (a) the trader shall provide the consumer with the information referred to in points (b) and (c) of Article 6(1) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in points (a), (h) and (k) of Article 6(1), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;
 - (b) the confirmation of the contract provided in accordance with paragraph 2 of this Article shall contain the information provided for in Article 6(1).

Member States may decide not to apply this paragraph.

- **Art 8 Part 6.** Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.
- **Art 9 Part 3.** The Member States shall not prohibit the contracting parties from performing their contractual obligations during the withdrawal period. Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract.

The trader duty to disclosure

- The CRD provides two types of information:
 - General information requirements – for contracts other than distance or off-premises (Art 5)
 - Specific information requirements – for distance and off-premises contracts (Art 6)

The trader duty to disclose (I)

The interplay between the CRD and UCPD

CRD (Part I of Art 5, Art 6)	UCPD (Part 4 of Art 7)
<p>1. Before the consumer is bound by a contract [...], or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:</p> <ul style="list-style-type: none">(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;(b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;(c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;(d) where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;	<p>4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:</p> <ul style="list-style-type: none">(a) the main characteristics of the product, to an extent appropriate to the medium and the product;(b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;(c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;(d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

The trader duty to disclose (II)

The interplay between the CRD and UCPD

CRD	UCPD (Part 4 of the Article 7)
<p>(e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;</p> <p>(f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;</p> <p>(g) where applicable, the functionality, including applicable technical protection measures, of digital content;</p> <p>(h) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.</p>	
<p>Art 6 provides exhausted list of information which should be provided in case of distance and off – premises contract</p>	<p>The UCPD does not provide any particular requirements for such contracts with exception requirement re information on the withdrawal or cancellation right</p>

The trader duty to disclose (III)

The interplay between the CRD and UCPS

- What is the content of “material information”: the general information list according to the CRD or according to the UCPS?
- Should the law implementing the UCPS amended according to the general information requirements provided by the CRD?
- Should the double sanctions system indicated in the national legislation or should be regarded that the omission of the material information established by the CRD requirements means unfair commercial practice and there is no necessity for the additional sanctions according to the CRD?

The trader duty to disclose (IV)

The interplay between the CRD and UCPD

- What kind of standard of consumer should apply by assessing the correctness of the provision of the information according to the CRD – average consumer or particular consumer?
- Should be the ECJ practice concerning the interpretation of the UCPD taken into account by applying (interpreting) the provisions of the CCD, e.g. the practice concerning the average consumer; the interpretation of the Part 4 of the Article 7 (e.g. ECJ case *Konsumentombudsmannen v Ving Sverige AB*, Case C-122/10)?

The CRD

- (9) This Directive establishes rules on information to be provided for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts. This Directive also regulates the right of withdrawal for distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of business-to-consumer contracts.
- (11) This Directive should be without prejudice to Union provisions relating to specific sectors, such as medicinal products for human use, medical devices, privacy and electronic communications, patients' rights in cross-border healthcare, food labelling and the internal market for electricity and natural gas.
- (12) The information requirements provided for in this Directive should complete the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [7] and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") [8]. Member States should retain the possibility to impose additional information requirements applicable to service providers established in their territory.

The UCPD

- (10) **It is necessary to ensure that the relationship between this Directive and existing Community law is coherent, particularly where detailed provisions on unfair commercial practices apply to specific sectors.** This Directive therefore amends Directive 84/450/EEC, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [4], Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests [5] and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services [6]. **This Directive accordingly applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. This is particularly important for complex products with high levels of risk to consumers, such as certain financial services products. This Directive consequently complements the Community acquis, which is applicable to commercial practices harming consumers' economic interests.**
- **Art 3 Part 4. In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.**

Penalties

- **Article 23 Enforcement**

1. Member States shall ensure that **adequate and effective means exist to ensure compliance** with this Directive.

- **Article 24 Penalties**

1. Member States shall lay down the rules **on penalties applicable to infringements** of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. **The penalties provided for must be effective, proportionate and dissuasive.**

2. Member States shall notify those provisions to the Commission by 13 December 2013 and shall notify it without delay of any subsequent amendment affecting them.

The amendments of the UTD and CSD

- The aim of Articles 8a (the Art 32,33 of the CRD) is
 - To provide a legal ground for the collection/exchange of information about the cases where the MS departure from the provisions of the directives:
 - **Unfair Terms Directive**
 - Re extension the unfairness assessment to individually negotiated contractual terms or to the adequacy of the price or remuneration
 - Re adoption of lists of contractual terms which shall be considered as unfair
 - Other departure
 - **Consumer Sales Directive**
 - Re limitation and liability period term
 - Re information about the defect term
 - Re 6 months presumption
 - Re second hand goods

The content of the Art 32, 33 of the CRD

Article 32 Amendment to Directive 93/13/EEC

In Directive 93/13/EEC, the following Article is inserted:

"Article 8a

1. Where a Member State adopts provisions in accordance with Article 8, it shall inform the Commission thereof, as well as of any subsequent changes, in particular where those provisions:

- extend the unfairness assessment to individually negotiated contractual terms or to the adequacy of the price or remuneration; or,
- contain lists of contractual terms which shall be considered as unfair,

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information."

Article 33 Amendment to Directive 1999/44/EC

In Directive 1999/44/EC, the following Article is inserted:

"Article 8a

Reporting requirements

1. Where, in accordance with Article 8(2), a Member State adopts more stringent consumer protection provisions than those provided for in Article 5(1) to (3) and in Article 7(1), it shall inform the Commission thereof, as well as of any subsequent changes.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

3. The Commission shall forward the information referred to in paragraph 1 to the other Member States and the European Parliament. The Commission shall consult stakeholders on that information."

The justifications of the changes

- **The preamble of the CRD**

“(62) It is appropriate for the Commission to review this Directive if some barriers to the internal market are identified. In its review, the Commission should pay particular attention to the possibilities granted to Member States to maintain or introduce specific national provisions including in certain areas of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [15] and Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees [16]. That review could lead to a Commission proposal to amend this Directive; that proposal may include amendments to other consumer protection legislation reflecting the Commission’s Consumer Policy Strategy commitment to review the Union acquis in order to achieve a high, common level of consumer protection.

(63) Directives 93/13/EEC and 1999/44/EC should be amended to require Member States to inform the Commission about the adoption of specific national provisions in certain areas.”

- **The Opinion of the Committee of the Regions**

“15. feels in particular that the Euro barometer survey used as a basis here does not constitute sufficient ground for adopting the proposed directive. The Commission must in any case provide empirical and coherent reasons as to why action needs to be taken on the individual provisions. Currently, the impact assessment merely gives an abstract indication of the effects of various different options for action;”

- **The Opinion of the Committee of the European Economic and Social Committee**

“6.1.1.6 The EESC considers that upholding the present system in addition to setting up a committee and a system for registering terms deemed unfair by the national authorities would be a sufficient step forwards for information on unfair terms, and would be extremely useful to traders, given the reduction in compliance costs, to those implementing the law and to consumers.”

The ambiguity of the regulation

The content of the obligation of the MS?

- Does the Art 8a apply to the cases where different regulation was adopted before the adoption/to take effect/application of the CRD?
- What is the scope of information? What does it mean “provisions”?
- What kind of institution shall adopt “provisions”?

The ambiguity of the regulation

The content of the competence/obligations of the European Commission?

- Does the obligation means that the European Commission have to establish the internet site similar to CLABUS data base (which is now not working)?
- Should the European Commission analyze the information, prepare studies or should only technically to upload the received information into the website?



**THANK YOU FOR YOUR
ATTENTION!!!**