

The Consumer’s Right of Withdrawal from a Distance or Off-Premises Contract in the Light of the Cypriot Consumer Protection Law

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Abstract

This study aims to highlight the various aspects of the consumer’s right of withdrawal from a distance or off-premises contract, as set out in Directive 2011/83/EU and its amending Directive 2019/2161/EU. First, it deals with the regulatory framework of Articles 20-27 of Cypriot Consumer Protection Law 112(I)/2021 (legal-policy objective, period, and ways of exercising of the right, legal consequences arising from the exercise, exceptions). Then, the study discusses the legal nature of the said right. Finally, it analyses the need for a mandatory right of withdrawal, equally accessible to all categories of consumers and simple in its exercise, on the field of distance or off-premises contracts.

Keywords: Cypriot Consumer Protection Law 112(I)/2021, Directive 2011/83/EU, Directive 2019/2161/EU, consumer, trader, right of withdrawal, distance or off-premises contract

Introduction: The regulatory framework of Articles 20-27 of Cypriot Consumer Protection Law 112(I)/2021² on the consumer’s right of withdrawal from a distance or off-premises contract

Justification from the View of Legal Policy

When concluding an off-premises contract,³ the consumer may not have carefully weighed his interests and needs, if taken by surprise and acting under the state of

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² Hereinafter referred to as ‘CPL’.

³ See on the concept of ‘off-premises contract’, Article 15 of CPL, as well as Recital 21 and Article 2 (8) of (full targeted harmonisation) Directive 2011/83/EU: ‘off-premises contract’ means any contract between the trader and the consumer: (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader; (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a); (c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed, in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or (d) concluded during an

psychological pressure exerted by the conditions under which the contract in question was concluded and may therefore wish to withdraw from the obligations entered into under the said contract.⁴ The consumer also needs protection when concluding a distance contract,⁵ since he can proceed to check the appearance, texture,

excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer'; (see also Article 2 of CPL, as well as Recital 22 and Article 2, indent 9 of Directive 2011/83/EU for the concept of 'business premises').

⁴ See Rigas Giannopoulos, Nikolaos Eleftheriadis, 'Articles 3, 3a-3m' 181-258 in Elisa Alexandriou (ed.) *Consumer Protection Law, Greek-EU, Interpretation by Article of Law 2251/1994 and Other Relevant Legislation (Δίκαιο Προστασίας Καταναλωτή, Ελληνικό-Ενωσιακό, Κατ' Άρθρο Ερμηνεία του Ν. 2251/1994 και Άλλων Σχετικών Νομοθετημάτων)* (3rd edn, Athens: Nomiki Vivliothiki, 2018) Article 3e no 111 (in Greek); Roi Pantelidou, 'Self-Commitment and Release in Off-Premises Contracts' (Αυτοδέσμευση και Αποδέσμευση στις Συμβάσεις που Καταρτίζονται Εκτός Εμπορικού Καταστήματος) (1995) 7 *Armenopoulos* 877 (in Greek) with regard to off-premises contracts under pre-existing law; Apostolos Georgiades, *Manual of Special Contract Law (Εγχειρίδιο Ειδικού Ενοχικού Δικαίου)* (Athens: P. N. Sakkoulas, 2014) para 11 no 3 and 14 (in Greek); Antonios Karampatzos, *Private Autonomy and Consumer Protection – A Contribution to Behavioural Economic Analysis of Law (Ιδιωτική Αυτονομία και Προστασία του Καταναλωτή – Μία Συμβολή στην Συμπεριφορική Οικονομική Ανάλυση του Δικαίου)* (Athens: P. N. Sakkoulas, 2016) no 426, 428 (in Greek), where he refers to 'serious external preferential disturbance' in the trading situation in question, and in particular in the door-to-door contracts; Georgios Argyros 'The Right of Withdrawal of the Consumer in Common European Sales Law' ('Το Δικαίωμα Υπαναχώρησης του Καταναλωτή στο Κοινό Ευρωπαϊκό Δίκαιο Πωλήσεων') (2014) 2 *Civil Law & Civil Procedure Applications* 105, 108 under III (in Greek); Christoph Schärtl, 'The Consumer-Protecting Right of Withdrawal from Off-Premises and Sistant Contracts' ('Der verbraucherschützende Widerruf bei außerhalb von Geschäftsräumen geschlossenen Verträgen und Fernabsatzverträgen') (2014) 7 *Juristische Schulung* 577, 579 under B I 1 b (in German); Marco Loos, 'Rights of Withdrawal', *Centre for the Study of European Contract Law - Working Paper Series no. 2009/04* (2009), (last accessed: 24 March 2021) 6-7, para 3.2 a; Günter Reiner, 'The consumer-protecting right of withdrawal in the law of declarations of will' ('Der verbraucherschützende Widerruf im Recht der Willenserklärungen') (2003) 203 *Archiv für die civilistische Praxis* 1, 9-11 under Teil 1. B. I-III, 44 (in German), speaking of psychological or informative (cognitive) impairment of consumer's self-determination, while as purpose of the consumer's right of withdrawal, he defines the protection of the consumer's free self-determination (substantive contractual freedom); Recital 21 and 37 of Directive 2011/83/EU; Case C-481/99 *Georg Heiningcr and Helga Heiningcr v Bayerische Hypo- und Vereinsbank AG* [2001] ECR I-9945, para 27 in the light of the previous Directive 85/577/EEC; Case C-412/06 *Annelore Hamilton v Volksbank Filder eG* [2008] ECR I-2383, paras 3, 32, 33 in the light of the previous Directive 85/577/EEC.

⁵ See Article 15 of CPL, as well as Recital 20 and Article 2 (7) of Directive 2011/83/EU on the concept of 'distance contract': "distance contract means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication [such as e-mail, telephone, fax or Internet], up to and including the time at which the contract is concluded"; see also Commission Notice, 'Guidance on the Interpretation and Application of Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights' (Text with EEA relevance) OJ C 525, 42-43 under 4.1.

constitution and characteristics of the goods⁶ at the time of their delivery, and can therefore obtain a direct, personal, and accurate picture of the goods. At that point, however, it is possible to establish a discrepancy between the real and the perceived characteristics of the goods at the time of concluding the contract, which might conflict with the real interest, legitimate expectations, and needs of the buyer.⁷ For these reasons, Article 20 of CPL (see also Article 9 of Directive 2011/83/EU) confers on the consumer the right of unreasoned withdrawal (i.e. without any particular reason existing or being invoked, even if the consumer is satisfied both with the quality of the service provided or the product delivered and the behaviour of the trader toward them) (right of withdrawal/droit de rétractation/Widerrufsrecht), merely due to the consumer's change of mind and the desire to be released from the contract concluded (after the careful weighing of all aspects of the transaction concerned and the calm and thoughtful/sober examination of whether or not the transaction has been in the interest, needs and expectations of the consumer) within 14 calendar days, which is the 'cooling off period' and indeed a mandatory time-limit, the shortening of which is prohibited but may be extended with the agreement of the parties; see Articles 68 (2) and 69 of CPL; see also Article 25 of Directive 2011/83/EU.⁸

⁶ For the concept of 'goods' see Article 4 (1) (a) of Directive 2019/2161/EU, as it amended the concept of 'goods' in Article 2 (3) of Directive 2011/83/EU and gave it the meaning of Article 2 (5) of Directive 2019/771/EU.

⁷ See Giannopoulos, Eleftheriadis (no 4) Article 3e no. 111; Karakostas, *Consumer Protection Law, Law 2251/1994 Interpretation - Case-law - Practical application (Δίκαιο Προστασίας Καταναλωτή Ν. 2251/1994 Ερμηνεία - Νομολογία - Πρακτική εφαρμογή)* (3rd edn Athens: Nomiki Vivliothiki, 2016) Article 3-3m no. 401 (in Greek); Karampatzos (no 4) no 383, 385 and 390, who states that the intention to increase consumer confidence in distance transactions and to encourage their further participation in the field of e-commerce can be regarded as the ultima ratio of the right of withdrawal; Argyros (no 4) 105, 109 under III; Reiner (no 4) 1, 8-11 under Teil 1. B. I-III, 44; Loos (no 4) *ibid* 7-9 under 3.2 b-d.

⁸ See Giannopoulos, Eleftheriadis (no 4) Article 3e no. 111, 117; Karakostas (no 7) Article 3-3m no. 324; Georgiades (no 4) para 11 no 15, 19, 25-26; Karampatzos (no 4) no 328, 330 and 372, who states that, in cases such as distance or off-premises sales, the consumer often acts under bounded rationality and in particular bounded self-control; Eviropides Hadjinestoros, George Charalambous, *The Sale of Goods and Consumer Protection in Cyprus (Κυπριακό Δίκαιο Πώλησης Αγαθών και Προστασία Καταναλωτή)* (Athens: Nomiki Vivliothiki, 2016) Part B, 11. Right of withdrawal, 1. Introduction number 1 (in Greek); Pantelidou (no 4) 877, 879-880; Loos (no 4) 15-16 under 5.

Period and Manner of Exercise

The starting point of the 14-day period⁹ shall be the day following¹⁰ the date of the conclusion of the contract for service contracts or contracts for the supply of water, gas, or electricity, where they are not put up for sale in a limited volume or a set quantity, of district heating or of digital content which is not supplied on a tangible medium. For sales contracts,¹¹ the starting point shall be the day following the day of acquisition of the physical possession of the goods by the consumer or a third person other than the carrier, indicated by the consumer¹² [or the day following the day of acquisition of the physical possession of the last good in the case of multiple goods ordered by the consumer in one order and delivered separately (e.g. order for a mobile phone, a TV and a PC from the same e-shop) or the last lot or piece in case of delivery of a good consisting of multiple lots or pieces (sale of a group of items) for the purpose of overseeing the whole order (e.g. order for encyclopedia delivered in 10 separate volumes) or the first good (preceding an identical set of goods) in the case of a contract for the regular delivery of goods over a specified period (i.e. a supply contract; e.g. the order of bottles of a specified variety of wine to be delivered each week for one year) (Article 20 (2) of CPL; see also Article 9 (2) of Directive 2011/83/EU)]. If the trader has not provided the consumer with the information required for the right of withdrawal, the withdrawal period shall expire 12 months after the end of the initial withdrawal period.¹³

If the trader has provided the consumer with the required information within 12 months from the day referred to in Article 20 (2) of CPL, the withdrawal period

⁹ See also Article 4 (8) (a) of Directive 2019/2161/EU, by virtue of which paragraph 1a has been added to Article 9 of Directive 2011/83/EU; see also Article 4 (8) (b) of Directive 2019/2161/EU, under which the introductory part of Article 9 (2) of Directive 2011/83/EU was amended.

¹⁰ See Recital 41 of Directive 2011/83/EU; Commission notice (no 5) 49 under 5.1.1; see also Giovanopoulos, N. Eleftheriadis (no 2) Article 3e no. 117; Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 4.1 no 22.

¹¹ For the concepts of 'sales contract' and 'service contract', see Article 4 no 1 point (c) of Directive 2019/2161/EU, as it amended the concepts of 'sales contract' and 'service contract' referred to in Article 2 no 5 and 6 of Directive 2011/83/EU; see also Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 4.1 no 20; Case C-20/03 *Criminal Proceedings Against Marcel Burmanjer, René Alexander Van Der Linden and Anthony De Jong* [2005] ECR I-4133, paras 34, 35.

¹² See Karakostas (no 7) Article 3-3m no 332, where he adds that the consumer may withdraw prior to the delivery of the product, i.e. before the beginning of the time limit; Karampatzos (no 4) no 331; Recital 40 of Directive 2011/83/EU; Commission notice (no 5) 50 under 5.1.2.

¹³ See Recital 43 of Directive 2011/83/EU, which states that the introduction of a 12-month period is intended to ensure legal certainty; see also Karampatzos (no 4) no 316.

should expire 14 days after the day upon which the consumer receives that information (see Article 21 of CPL; see also Article 10 of Directive 2011/83/EU)¹⁴. The unilateral –addressed to the trader and altering the contractual relationship– statement by the consumer setting out his decision to withdraw must be sent within the 14-day period to the trader, irrespective of the time it was received by the latter [Article 22 (2) in conjunction with (4) of CPL, where the burden of proof of withdrawal within the legal time limits lies with the consumer; see also Article 11 (2) in conjunction with the paragraph 4 of Directive 2011/83/EU]. Any unequivocal (not tacit) statement by the consumer that he exercises the right of withdrawal is sufficient (e.g. by letter, telephone call, SMS, filling in and sending of the model form set out in Annex III, Section B, of CPL or the electronic withdrawal form on the trader's website; however, it is not sufficient to simply refuse or return goods which are not accompanied by an unequivocal statement).¹⁵ During the withdrawal period the contracting parties may, if they so wish, fulfil their contractual obligations.

Legal Consequences

The exercise of the right of withdrawal shall terminate the obligations of the contracting parties to: (a) perform the distance contract or off-premises contract, or (b) conclude a distance or off-premises contract in cases where an offer was made by the consumer (in the latter case, the statement of withdrawal made at a pre-contractual stage is equivalent to a lawful withdrawal of the consumer's proposal for a contract with the trader)¹⁶ (Article 23 of CPL; see also Article 12 of Directive 2011/83/EU). As a result of the exercise of the right of withdrawal, the contractual link is transformed

¹⁴ See also Article 4 no 9 of Directive 2019/2161/EU, amending paragraph 2 in Article 10 of Directive 2011/83/EU; see also Giovannopoulos, Eleftheriadis, (no 2) Article 3e no 116-120; Karakostas (no 7) Article 3-3m no. 330-334 and no 342; Hadjinestoros, G. Charalambous (no 8) Part B', 11. Right of withdrawal, 5 no 33; Case C-412/06 *Annelore Hamilton v Volksbank Filder EG* [2008] ECR I-2383, para 35, which states that incorrect information concerning exercise of the right of cancellation is equivalent to no information, since both situations are equally misleading for the consumer as regards his right of cancellation.

¹⁵ See Recital 44 and Article 11 (1) and (3) of Directive 2011/83/EU; Giovannopoulos, Eleftheriadis (no 2) Articles 3e and 3g no 120, 131-132; Karakostas (no 7) Article 3-3m no. 326, 328; Karampatzos (no 4) no 341-343; Schärfl (no 4) 577, 580 under B I 2; see also Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 3.1 no. 8, and 4.1 no 25; Commission, '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 amending Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council' (DG Justice Guidance Document)(2014); Commission notice (no 5) 51-52 under 5.2-5.3.

¹⁶ See Giovannopoulos, Eleftheriadis (no 2) Article 3n, no 134.

from a performance obligation to a ‘clearing obligation’, in which case the trader is obliged to reimburse any payment received from the consumer, including, where appropriate, delivery costs, unless these are additional delivery costs in case that the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader (e.g. by courier), without undue delay and in any event within 14 calendar days of the day, in which he was informed of the consumer’s decision to withdraw from the contract [Article 24 (1) and (2) of CPL; see also Article 13 (1) and (2) of Directive 2011/83/EU]¹⁷. As per paragraph 3 of Article 24 of CPL (see also Article 13 of Directive 2011/83/EU), unless the trader has offered to collect the goods himself, with regard to sales contracts, he/she may withhold the reimbursement until he/she has received the goods back, or until the consumer has supplied evidence of having sent back the goods; whichever is the earliest (the consumer’s simple express statement is not sufficient as proof of the return of the goods; however, it is sufficient, for example, to provide a scanned copy of a consignment from a registered post sent by the consumer to the trader).¹⁸

It should also be pointed out that by Article 4 no 10 of Directive 2019/2161/EU, the following paragraphs have been added to Article 13 of Directive 2011/83/EU:¹⁹

4. In respect of personal data²⁰ of the consumer, the trader shall comply with the obligations applicable under Regulation (EU) 2016/679. 5. The trader shall refrain from using any content, other than personal data, which was provided

¹⁷ Id., Articles 3h-3i no. 133, 135-137, who state that the 14th day from the beginning of the time limit is an ex-lege designated payment day, resulting in an interest-bearing obligation as of that day, without prior notice to the consumer (GrCC 341); see also Recital 46 of Directive 2011/83/EU; Case C-511/08 *Handelsgesellschaft Heinrich Heine GmbH v Verbraucherzentrale Nordrhein-Westfalen e.V.* [2010] ECR I-3047.

¹⁸ See Hadjinestoros, Charalambous (no 8) Part B’, 11. Right of withdrawal, 6.1.1 no 40; Loos (no 4) 22 under 8, who states that it is sufficient for the goods to be delivered by the consumer to a postal service or to a carrier within the prescribed 14-day period and for the trader to be provided with proof that the goods have been dispatched (e.g. photocopy of the postal or transport order); Commission notice (no 5) 55 under 5.5.3.

¹⁹ See also Commission notice (no 5) 53 under 5.4.

²⁰ According to Article 4 (1)(b) of Directive 2019/2161/EU, which inserted the point (4a) in Article 2 of Directive 2011/83/EU, ‘personal data’ means personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council. In accordance with the above definition, consumers’ personal data could include the consumer’s name, gender, social security number, telephone, credit card, account data, email address, geolocation data, data concerning consumer’s interaction with the trader’s website (e.g. text messages, emails, customer service routes), records of products purchased, internet browsing history and other personal information that identifies, relates to or could reasonably be linked with the consumer.

or created by the consumer when using the digital content or digital service supplied by the trader, except where such content: (a) has no utility outside the context of the digital content or digital service supplied by the trader; (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader; (c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts; or (d) has been generated jointly by the consumer and others, and other consumers are able to continue to make use of the content. 6. Except in the situations referred to in point (a), (b) or (c) of paragraph 5, the trader shall, at the request of the consumer, make available to the consumer any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader. 7. The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format. 8. In the event of withdrawal from the contract, the trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to paragraph 6.

According to Recitals 31 and 33 of Directive 2019/2161/EU, given the similarities and interchangeability of paid digital services and digital services provided in exchange for personal data, such services should be subject to the same rules as provided for in Directive 2011/83/EU, and the scope of Directive 2011/83/EU should be extended to cover also contracts under which the trader supplies or undertakes to supply a digital service to the consumer, and the consumer provides or undertakes to provide personal data. Similarly to contracts for the supply of digital content, which is not supplied on a tangible medium, that Directive should apply whenever the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content or digital service, and the trader does not process those data for any other purpose. Directive 2011/83/EU should also not apply to situations where the trader collects personal data for the sole purpose of meeting legal requirements to which the trader is subject (such situations can include, for instance, cases where the registration of the consumer is required by applicable laws for security and identification purposes), as well as situations where the trader only collects metadata, such as information concerning the consumer's device

or browsing history, except where this situation is considered to be a contract under national law (Recital 34 of Directive 2019/2161/EU). It should also not apply to situations where the consumer, without having concluded a contract with the trader, is exposed to advertisements exclusively to gain access to digital content or a digital service. However, Member States should remain free to extend the application of that Directive to such situations, or to otherwise regulate such situations, which are excluded from the scope of that Directive (see Recital 35 of Directive 2019/2161/EU).

On the other hand, the consumer shall not, in principle, incur any liability (e.g. he is not liable for compensation for lost profit or loss of business opportunity of the trader or for compensation for difficulty in selling the product sold after withdrawal or for the restoration of the negative interest due to a pre-contractual fault or due to a breach of confidence of the trader, who has reasonably been convinced by the behaviour of the consumer that the latter will not exercise the right of withdrawal) if he exercises the right of withdrawal²¹ [Article 25 (5) of CPL; see also Article 14 (5) of Directive 2011/83/EU]: unobstructed right to withdraw from the contract without fear of exposure to claims by the trader], however he is subject to the obligations imposed by law, in particular:²²

(a) *the return of goods* (sending back or handing them over) to the trader or to a person authorised by the trader to obtain the goods without undue delay and in any event within 14 days of the day on which he informed the trader of his decision to withdraw from the contract (this time limit shall be respected if the consumer sends back the goods before the expiry of the 14 calendar days' time limit), unless the trader has offered to collect the goods himself (in the case of off-premises contracts, goods delivered at the consumer's home at the time of conclusion of the contract are collected by the trader at his own expense, in so far as they are goods which by their nature cannot normally be returned by post, such as furniture) [Article 25 (1) of CPL; see also Article 14 (1) of Directive 2011/83/EU]; in the case of the return of goods, the consumer shall bear only the direct cost of the return of the goods, unless the trader has agreed to bear it himself or the trader has failed to inform the consumer that the latter has to bear it;²³

²¹ See Giovannopoulos, Eleftheriadis (no 2) Articles 3, 3a-3m no 143; Karakostas, (no 7) Article 3-3m 344.

²² See Giovannopoulos, Eleftheriadis (no 2) Article 3j no 140-143; Karakostas (no7) Article 3-3m no 344-354.

²³ See also Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 3.1 no. 9, who state that in the case of distance contracts where goods cannot normally be returned by post (e.g. furniture),

(b) *liability for any diminished value of the goods*, unless the trader has failed to provide notice of the right of withdrawal, in which case the consumer is not under any circumstances liable for any diminished value of the goods [Article 25 (2) of CPL; see also Article 14 (2) of Directive 2011/83/EU]²⁴ [i.e. the consumer is responsible if he tried the shoes bought on the street and not at home;²⁵ the consumer is liable if he put on the ordered clothes in social events;²⁶ the consumer is responsible, if he tried on a raincoat he bought during a rainy week;²⁷ where the goods are contained in packaging, which the consumer would have to remove by destroying it before verifying the nature of the goods, the diminished value thus generated should not be regarded as a diminished value for which the consumer is responsible;²⁸ it would be different if the consumer removed labels, which need not be removed for the purpose of determining the nature of the good;²⁹ the diminished value which the trader is entitled to recover includes the cost of cleaning or repairing the good or the loss of income of the trader, where the latter should sell the good as second-hand;³⁰ in respect of digital

the trader should inform the consumer for the cost of their return [see Article 6 (1) point i' and (6) of Directive 2011/83/EU] setting, for example, a carrier and a price for the return of the goods, while where the trader has not designated such a carrier and the cost of return cannot be reasonably calculated in advance (e.g. because no return service is offered), he/she should then state that these costs will be payable and the statement should be accompanied by a reasonable estimate of the maximum costs, which could be calculated on the basis of the cost of delivery to the consumer [but the trader is not obliged to calculate the costs on the basis of different scenarios for the return of the goods (e.g. the cost of returning the goods not assembled)]; Commission notice (no 5) 52 under 5.2 and 54 under 5.5.2; Loos(no 4) 23 (8), who states that the consumer shall not bear the cost of returning the goods where the latter withdraws from the contract for reasons of non-conformity of the goods with the contract (e.g. due to a defect); see also Argyros (no 4)105, 112 under III C (b), who proposes an upper limit on the consumer's burden for the cost of returning the goods.

²⁴ See C. Schärfl (no 4) 577, 582 under B III, who states that the consumer's responsibility for any diminished value of the good is independent of fault and adds that the calculation of the diminished value of the good must be based on the actual value of the product and not on the agreed total price; see also Recital 47 of Directive 2011/83/EU; Commission notice (no 5) 56-58 under 5.5.4; Case C-489/07 *Pia Messner v Firma Stefan Krüger* [2009] ECR I-7315, para 29.

²⁵ See Giannopoulos, Eleftheriadis (no 2) Article 3j no 142; Karakostas (no 7)Article 3-3m no 350.

²⁶ See Hadjinestoros, Charalambous (no 8)Part B', 11. Right of withdrawal, 6.1.1. B no 48; Karampatzos (no 4)no 357.

²⁷ Stephen Weatherill, *EU Consumer Law and Policy* (2nd edn, Cheltenham, UK/Northampton, MA, USA: Elgar European Law, 2013) 114 (in English).

²⁸ See Hadjinestoros, Charalambous (no 8) Part B, 11. Right of withdrawal, 6.1.1. B no. 48.

²⁹ See Hadjinestoros, Charalambous (no 8) Part B, 11. Right of withdrawal, 6.1.1. B no. 48; DG Justice Guidance document (no 15) 47.

³⁰ See Karampatzos (no 4)no 411; Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 6.1.1. B no. 49; see also DG Justice Guidance document (no 15) 47-48.

technology products, where the distinction between use and testing is complicated, it is appropriate not to exclude the right of withdrawal; however, if the goods can no longer be sold as new, the trader should specify the diminished value of the goods in the event of withdrawal, which may consist of the objectively determined loss of income for the trader in the case of sale of the returned goods as used or the reasonable cost of return of the product to the previous condition (e.g. in the case of activation of computer software, which requires prior setup or profile);³¹ the consumer should be able to open the packaging in order to gain access to the goods in question, if normally such goods appear in shops without packaging; hence the damage caused to the packaging, simply by opening it, is not a cause for compensation, however, any protective tapes fitted on the product should be removed, only when it is strictly necessary for the testing thereof³²; the burden of proof that the goods during the withdrawal period were used beyond the reasonable measure to verify their nature is borne by the trader³³;

(c) *the obligation not to use and make available* to third parties the digital content or the digital service [Article 4 (11) (a) of Directive 2019/2161/EU, which added the paragraph 2a in Article 14 of Directive 2011/83/EU];

(d) *obligation to pay* to the trader an amount which is in proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract³⁴; this applies to contracts relating to the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or

³¹ See Commission notice (no 5) 56-57 under 5.5.4, which states that whether the consumer's testing of the goods went beyond what was necessary to establish their nature, characteristics and functioning will have to be assessed on a case-by-case basis in the event of a dispute. The comparison with what the consumer can normally do in a brick-and-mortar shop serves as a good point of reference, for example: the consumer would not be able to configure software on a computer; hence reasonable costs for any resetting of such equipment would also constitute diminished value.

³² See DG Justice Guidance document (no 5) 46-47; Commission notice (no 5) 56 under 5.5.4.

³³ The burden of proof must lie with the trader, on the one hand because the consumer lacks specialist knowledge (e.g. for digital products) in order to handle the burden of proof, on the other hand, because proof may be easier for the trader due to the development of the use of a specific system/mechanism/tool/procedure designed to control the use or degree of use of a particular product by the consumer (e.g. updated warehouse control system, through which the products enter and any lack or indication of wear of the product is directly controlled); see also Hadjinestoros, Charalambous, (no 8) Part B', 11. Right of withdrawal, 6.1.1. B no. 50; Argyros (no 4) 105, 112-113 under III C (b); Case C-489/07 *Pia Messner v Firma Stefan Krüger* [2009] ECR I-7315, para 27.

³⁴ See Commission notice (no 5) 60 under 5.6.2; see also Case C-641/19 *EU v PE Digital GmbH* [2020] ECLI:EU:C:2020:808, paras 29, 32 and 37.

of district heating, in case that the trader's performance of services or supply of the above mentioned goods starts during the withdrawal period at the express request of the consumer on a durable medium [Article 25 (3) of CPL and Article 14 (3) of Directive 2011/83/EU; see also the case of Article 25 (4) (a) of CPL and Article 14 (4) (a) of Directive 2011/83/EU, where the consumer does not incur the costs referred to above, as well as the case of Article 25 (4) (b) of CPL and Article 14 (4) (b) of Directive 2011/83/EU, where the consumer is not liable, in the case of the supply in whole or in part of digital content not supplied on a tangible medium; see also Article 4 (11) (b) of Directive 2019/2161/EU].

It should also be noted that, if the withdrawal period has expired and the consumer has not exercised his right to do so, he/she is now definitively bound by the contract and cannot be released from his/her contractual obligations, except by invoking the general provisions of civil law and provided that their specific requirements are fulfilled (e.g. provisions prohibiting acts which are contrary to morality or profiteering, provisions on the rights of the buyer in the event of lack of conformity of the goods sold with the contract of sale, provisions on vice of consent).³⁵

Legal Effects on Ancillary Contracts

If there are other contracts ancillary to the distance or off-premises contract concluded (e.g. service, maintenance, installation, technical support, after-sales upgrade, supply contracts for spare parts and consumables for the goods sold), they also shall be automatically terminated, without any costs for the consumer (Article 26 of CPL; see also Article 15 of Directive 2011/83/EU).³⁶ An ancillary contract is any contract by which the consumer acquires goods or services supplementary to a distance contract or to an off-premises contract and where those goods or services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader (e.g. the trader agrees with the consumer to provide the latter with subscription services on a private channel and sells him a decoder on the basis of a separate sales contract; here the sales contract is the ancillary contract).³⁷

³⁵ See Giannopoulos, Eleftheriadis (no 2) Article 3e no 115;Georgiades (no 4) para 11 no 21; Karakostas (no 7)Article 3-3m no. 341; Pantelidou (no 4)877, 882-883.

³⁶ A specific arrangement is provided for linked credit agreements in accordance with Article 15 of Cypriot Law on Consumer Credit 106(I)/2010 and Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

³⁷ See Commission notice (no 5) 65 under 5.10, according to which an ancillary contract may be, for example, a delivery, maintenance or installation contract, an insurance and credit agreement to finance

Exceptions

The right of withdrawal shall not apply to contracts provided for in Article 27 of CPL (see also Article 16 of Directive 2011/83/EU), even if they are distance and off-premises contracts, i.e.: a) *service contracts* after the service has been fully performed; where the contract provides for an obligation on the consumer to pay a price, only if performance has begun with the consumer's prior express consent, and with the acknowledgement³⁸ that he will lose his right of withdrawal once the contract has been fully performed by the trader (see Recital 42 and Article 4 (12) (a) under (i) of Directive 2019/2161, which amended point a' of paragraph 16 of Directive 2011/83/EU); b) *the supply of goods or services for which the price is dependent on fluctuations in the financial market* which cannot be controlled by the trader and which may occur within the withdrawal period; (see also Recital 43 of Directive 2019/2161//EU, where the exception should also be considered to apply to contracts for individual deliveries of non-network energy, because its price is dependent on fluctuations in the commodity markets or energy markets which cannot be controlled by the trader and which may occur within the withdrawal period);³⁹ c) *the supply of goods made to the consumer's specifications or clearly personalised*, due to the difficulty for the trader to resell them to third parties⁴⁰ (see Article 15 of CPL and Article 2 (4) of Directive

the purchase and an additional commercial guarantee; see also Hadjinestoros, Charalambous (no 8) Part B', 11. Right of withdrawal, 6.1.2 no 55-56; see also Karampatzos(no 4) no 360; Schärfl (no 4) 577, 582 under B V.

³⁸ See Giovannopoulos, Eleftheriadis (no 2) Article 31 no 149.

³⁹ See Commission notice (no 5) 65-66 under 5.11.1; Giovannopoulos, Eleftheriadis (no 2) Article 31 no 150, who states that an example of goods whose price depends on fluctuations in the money market may be precious metals, the price of which is formed through the stock exchange; see also Karakostas (no 7) Article 3-3m no 357, who mentions the gold price as an example of this category; Karampatzos (no 4) no 347.

⁴⁰ See Giovannopoulos, Eleftheriadis (no 2) Article 31 no 151; Karakostas (no 7) Article 3-3m no 358, who takes the example of the shirt with a consumer's photo printed on it; Karampatzos, (no 4) no 345, who takes the example of the 'wedding dress', which is 'cut and sewn' to the measurements and needs of a particular bride; see also DG Justice Guidance document (no 5) 54, which states that '[...] where the consumer simply makes up the goods by picking up from the standard (pre-set) options provided by the trader, such as colour or additional equipment in a car, or makes up a set of furniture on the basis of standard elements, it should not be possible to speak of either 'specification' or 'personalisation' in the narrow sense of this provision'; Commission notice (no 5) 66 under 5.11.2, according to which, this exception should cover, for example: goods, for which the consumer has provided specifications, such as measurements for furniture or the size of a fabric; goods, for which the consumer has requested specific personalised features, such as a particular design for a car that is made to order or a specific component for a computer, which has to be individually procured for that particular order and which was not part of the trader's general offer to the public; address labels with the consumer's contact information; see also

2011/83/EU for the concept of 'goods made to the customer's specification'; Recital 49 of Directive 2011/83/EU, which refers as an example to tailor-made curtains; Recital 42 of Directive 2019/2161/EU, where it is stated that the exception covers, for example, the manufacturing and installation of customised furniture at the consumer's home when provided under a single sales contract); d) *the supply of goods which are liable to deteriorate or expire rapidly* (i.e. susceptible products subject to short deterioration or expiration determined according to the type of product and market perception, such as foods and beverages with short expiry time limits, take-away restaurant deliveries, fresh flowers, cosmetics, medicines or products intended for a timed event, e.g. a sporting event);⁴¹ e) *the supply of sealed goods which are not suitable for return* due to health protection or hygiene reasons and were unsealed after delivery [the unsealing of these products, i.e. their export from the enclosed packaging in which they are placed, renders them unfit for resale (e.g. underwear, cosmetics and personal hygiene items such as toiletries, toothbrushes, shavers, combs, medicinal products, deodorants)];⁴² f) *supply of goods which are, after delivery, according to their nature, inseparably mixed with other items* [i.e. products which, by virtue of connection, mixture/blending, have become components of a single thing (e.g. fuel) or due to processing have become a new movable item];⁴³ g) *supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader*⁴⁴; h) *contracts where the consumer has specifically requested a visit*

Case 208/19, *NK (Individual house project)* [2020] ECLI:EU:C:2020:382, paras 58-59; Case C-529/19, *Möbel Kraft* [2020] ECLI:EU:C:2020:846, paras 27-29.

⁴¹ See Giannopoulos, Eleftheriadis (no 2) Article 3l no 152; Karakostas (no 7) Article 3-3m no 359; Commission notice (no 5) 67 under 5.11.3.

⁴² See Commission notice (no 5) 67-68 under 5.11.4; Giannopoulos, Eleftheriadis (no 5) Article 3l no 153; Karakostas (no 7) Article 3-3m no. 360; see also Case C-681/17 *slewo – schlafen wohnen GmbH v Sascha Ledowski* [2019] ECLI:EU:C:2019:255, para 26-48.

⁴³ See Giannopoulos, Eleftheriadis (no 2) Article 3l no 154, who argues that the provision includes not only mixtures, alloys, solutions, but also solid articles connected in such a way that they cannot be separated without the product to which the right of withdrawal relates, to substantially deteriorate or decrease its commercial value (e.g. computer parts, which, if used once, cannot easily be resold because of the risk of 'contamination' by malware); so does Karakostas (no 7) Article 3-3m no 361; see also Karampatzos (no 4) no 346.

⁴⁴ See Giannopoulos, Eleftheriadis (no 2) Article 3l no 155, who state that this case, characterised as a result of lobbying the spirit drinks, refers mainly to wine, which is sold with a speculative intent before production or final bottling; see also for the contracts for the pre-purchase of wine (*vin en primeur*), Karampatzos (no 4) no 348.

*from the trader for the purpose of carrying out urgent repairs or maintenance (e.g. plumbing/electrical/carpentry services, maintenance of lift/heating/air conditioning systems, and the sale of equipment, spare parts, materials).*⁴⁵ The relevant contracts must have been concluded by means of distance (e.g. via telephone call or website use) or off-premises⁴⁶ communication. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods (these contracts will be considered as off-premises contracts if they are concluded by the trader himself or by his agent during his on-site visit to the consumer's premises); i) *supply of sealed audio or sealed video recordings or sealed computer software, which were unsealed after delivery* [packaged tangible mediums in which digital content has been stored within the meaning of Article 15 of CPL and Article 2 (11) of Directive 2011/83/EU];⁴⁷ j) *the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications* (the value of these products is to access their content and read rather than hold them, and newspapers in particular are products of short-term use);⁴⁸ k) *contracts concluded at public auction* [see Article 15 of CPL and Article 2 (13) of Directive 2011/83/EU for the concept of 'public auction']; l) *the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance* ('capacity bookings' relating to hotel bookings or rooms rental or general tourist accommodation or rental of holiday homes, bookings for entertainment events (e.g. concerts, cinemas, theatres, restaurants, sports events));⁴⁹

⁴⁵ See Commission notice (no 5) 69 under 5.11.7; Giovannopoulos, Eleftheriadis (no 2) Article 3l no 156; Karakostas, (no 7) Article 3-3m no 363.

⁴⁶ See Giovannopoulos, Eleftheriadis (no 2) Article 3l no 156.

⁴⁷ See Giovannopoulos, Eleftheriadis (no 2) Article 3l no 157, who states that in this case, after unsealing the packaging of tangible media after delivery, the consumer has the option of (unauthorised) copying of their digital content; so does Karakostas (no 7) Article 3-3m no 364; Karampatzos (no 4) no 349; Loos (no 4) 13 footnote 69. In this respect, it could be argued that an exception to this exception, therefore, a return to the rule of recognition of the right of withdrawal, should be justified in the case that the consumer finds that, following the unsealing of security tapes and the activation of software, the software has a functional defect that does not allow copying the digital content.

⁴⁸ See Giovannopoulos, Eleftheriadis (no 2) Article 3l no 158; Karampatzos (no 4) no 346.

⁴⁹ See Recital 49 of Directive 2011/83/EU; Commission notice (no 5) 68 under 5.11.6; Giovannopoulos, Eleftheriadis (no 2) Article 3l no 160; Karakostas (no 7) Article 3-3m no 367; see also C-336/03, *easyCar*, ECLI:EU:C:2005:150, paras 26 and 31, in particular.

m) *the supply of digital content* [i.e. data produced and supplied in digital form as referred to in Article 15 of CPL and Article 2 (11) of Directive 2011/83/EU] which is not supplied on a tangible medium (e.g. CD, DVD, Blu-ray, USB memory, HDD), if the performance has begun and, if the contract places the consumer under the obligation to pay, where: (i) the consumer has provided prior express consent to begin the performance during the right of withdrawal period; (ii) the consumer has provided acknowledgement that he thereby loses his right of withdrawal; and (iii) the trader has provided confirmation in accordance with Article 18 (2) or Article 19 (7) of CPL (see also Articles 7 (2) and 8 (7) of Directive 2011/83/EU)⁵⁰ [refers to the case where, unlike Article 27 (i) of CPL and Article 16 (i) of Directive 2011/83/EU where digital content is stored on a tangible medium, digital content is delivered online to the consumer either by downloading ('mobile apps' or software), either by streaming of an audio-visual file or by other equivalent means].⁵¹

In addition, it should be noted that where a right of withdrawal is not provided for in accordance with Article 27 of CPL (see also Article 16 of Directive 2011/83/EU), the trader must inform the consumer that he will not benefit from a right of withdrawal prior to the conclusion of the contract [Article 17 (1) (k) of CPL and Article 6 (1) (k) of Directive 2011/83/EU]. In such a case, it is not necessary to inform the consumer about the conditions and time limit for exercising the right of withdrawal, the model withdrawal form, etc., unless where the exceptional unavailability of the right of withdrawal is conditional (e.g. where the good consists of sealed software, the consumer should be informed of his right of withdrawal and of the circumstances in which he may lose his right, since whether the right applies or not depends on whether or not the consumer has unsealed the goods in question).⁵²

Finally, in accordance with Article 4 (12) (b) of Directive 2019/2161/EU, the following subparagraphs have been added to Article 16 of Directive 2011/83/EU:

⁵⁰ See Recitals 30 and 44 and also Article 4 (12) in point (a) (ii) of Directive 2019/2161/EU which replaced point (m) of Article 16 of Directive 2011/83/EU; see also Commission notice (no 5) 61-62 under 5.7.

⁵¹ See *Giovannopoulos, Eleftheriadis* (no 2) Article 31 no 161; *Karakostas* (no 7) Article 3-3m no 368; *Karampatzosi* (no 4) no 299 and no. 350; see also DG Justice Guidance document (no 5) 66, which states that expression of consent and acknowledgment by means of a pre-ticked box or accepting the general terms and conditions is not likely to satisfy the requirements of Article 16 (m) of Directive 2011/83/EU; Commission notice (no 5) 59 under 5.6.1; Case C-673/17 *Planet49* [2019] ECLI:EU:C:2019:801, para 65, concerning personal data processing.

⁵² Commission (no 5) 51-52 under 5.2.

Member States may derogate from the exceptions from the right of withdrawal set out in points (a), (b), (c) and (e) of the first paragraph for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection⁵³. In the case of service contracts which place the consumer under an obligation to pay where the consumer has specifically requested a visit from the trader for the purpose of carrying out repairs, Member States may provide that the consumer loses the right of withdrawal after the service has been fully performed provided that the performance has begun with the consumer's prior express consent.

Legal Nature of the Consumer's Right of Withdrawal from a Distance or Off-Premises Contract

In one view,⁵⁴ the legal effects of a distance or off-premises contract do not occur before the expiry of the withdrawal period, because a condition of the contract's activation is missing, which is the non-exercise of the right of withdrawal within the prescribed time limit. In a different perspective, reference may be made to a contract subject to a condition precedent, with a contractual arrangement similar to the sale under trial. After the expiry of the period of 14 days, the activation condition – otherwise the condition precedent – of the contract is fulfilled and consequently the contract is definitively binding and fully produces its legal effects.⁵⁵

⁵³ See also Recital 55 of Directive 2019/2161/EU.

⁵⁴ See Giovannopoulos, Eleftheriadis (no 2) Article 3e no 113, who state that this position is supported convincingly, but also state the opposite view and point out that the adoption of one or the other view does not represent major differences in legal consequences; Georgiades (no 4) para 11 no 17; see also. Pantelidou(no 4) 877, 882; see also in detail Reiner (no 4)1, 4-13, 19-45 with regard to the two models of German theory [on the one hand the 'ineffectiveness model' (ineffective contract subject to a condition precedent, referred as 'Unwirksamkeitsmodell') and on the other hand the 'effectiveness model' (effective contract subject to a resolutive condition, referred as 'Wirksamkeitsmodell')] in relation to the manner of manifestation and the systematic classification of the right of withdrawal (Widerrufsrecht) and the connected cancellation of the contractual link, as well as the fact that the right of withdrawal referred to above is part of the second model and resembles the right to cancel a voidable transaction (right that also alters the legal relationship).

⁵⁵ See Giovannopoulos, Eleftheriadis (no 2) Article 3e no 115; Georgiades (no 4)para 11 no 21, 40.

From another perspective,⁵⁶ the exercise of the right of withdrawal results in the release of the consumer from the contract and the removal of the effects of the already concluded and fully valid contract (since there is no other reason impairing the validity of the contract). The exercise of the abovementioned right would subsequently break the contractual link and create a new legal situation between the parties, which would result in cancelling the mutual obligations⁵⁷ of giving and receiving.

From a third, more accurate, perspective,⁵⁸ withdrawal is not a reason for the termination of the entire contract, but a reason to cancel the main contractual obligations. In other words, withdrawal does not repeal the contract but merely modifies its content, in that the contract, which originally intended to fulfil the mutual obligations, now has as its content the reciprocal claims for the reimbursement of any benefits received under the provisions on unjust enrichment (for a reason which has ended).⁵⁹ Since the basic contractual relationship is a teleologically structured complex of several obligations (principal and ancillary) joined in a single link leading to fulfilment, it should be accepted⁶⁰ that withdrawal retroactively reverses the principal obligations already fulfilled⁶¹ and cancels the unfulfilled obligations, but does

⁵⁶ See Karakostas (no 7) Article 3-3m 323.

⁵⁷ Ibid. no 339.

⁵⁸ See Karampatzos (no 4) no 337-340 with extensive literature on both opinions, and no 351, where the author states that the exercise of withdrawal entails the cancellation of the mutual obligations of the parties to supply, the reversal of the contract (but not with full retroactive effect, since any ancillary obligations of loyalty, protection, etc. remain existing) and its conversion into a 'clearing relationship'; see also Apostolos Chelidonis, 'Article 382' in Apostolos Georgiades (ed.), *Short Interpretation of the Civil Code I (Σύντομη Ερμηνεία του Αστικού Κώδικα I)* (Articles 1-946) (Athens: P. N. Sakkoulas, 2010) 759-766 no 20 on legal withdrawal under GrCC 382 (in Greek); Stamatis Koumanis, 'Article 389', in Apostolos Georgiades (ed.), *Short Interpretation of the Civil Code I (Σύντομη Ερμηνεία του Αστικού Κώδικα I)* (Articles 1-946) (Athens: P. N. Sakkoulas, 2010) 800-805 no 11 (in Greek); Michael Stathopoulos, *Επίτομη of General Contract Law (Επιτομή Γενικού Ενοχικού Δικαίου)* (Athens - Thessaloniki: Sakkoulas Publications, 2016) para 21 V. 4. no 116 (in Greek); Panagiotis Papanikolaou, 'Article 389' in Apostolos S. Georgiades, Michael P. Stathopoulos (eds.) *Civil Code Interpretation by Article - Case law - Bibliography, Volume II, General Contract Law (Articles 287-495) [Ερμηνεία κατ' άρθρο - Νομολογία - Βιβλιογραφία, Τόμος II, Γενικό Ενοχικό (Άρθρα 287-495)]*, (Athens: P. N. Sakkoulas, 1979) 376-380 no 6 and 7 (in Greek).

⁵⁹ See Stathopoulos,(no 58) para 21 V. 4. no 113, 116 on withdrawal in the context of irregular development in bilateral contracts.

⁶⁰ See in particular Koumanis (no 58) no 11, who supports the limited retroactivity of withdrawal; see also Stathopoulos (no 58) para 21 V. 4. no 116-120; the view of the limited retroactive effect of withdrawal is also reflected in Article 12 of Directive 2011/83/EU, where 'the exercise of the right of withdrawal terminates the obligations of the contracting parties (a) to perform the distance or off-premises contract [...] in conjunction with article 13 (1) and 14 (1) of Directive 2011/83/EU.

⁶¹ See Article 25 (3) of CPL and Article 14 (3) of Directive 2011/83/EU.

not affect any ancillary obligations, in particular behavioural obligations (e.g. loyalty, protection) intended to achieve the purpose of the contract or to protect absolute rights of the person, the infringement of which may give rise to claims for compensation [see, for example, the obligation to compensate the trader under Article 25 (2) of CPL and Article 14 (2 a') of Directive 2011/83/EU, if the consumer has caused a diminished value of the goods supplied by exceeding the reasonable degree of use necessary to establish the nature, characteristics and functioning of the goods]. The exercise of the right of withdrawal entails the creation of a new contractual relationship ('clearing relationship') between the parties, which substitutes the initial contractual relationship and is based on the mutual obligation to reimburse the benefits paid. If no benefit was paid and no ancillary obligations were generated, withdrawal shall terminate the contract in total.⁶²

If the distance or off-premises contract concluded were considered to be a conditional contract (*conditio juris*), i.e. a contract subject to the condition of the expiry of the withdrawal period, it would be an incomplete contract, and there would be a risk that it would remain indefinitely incomplete, if the trader did not fulfil his/her obligation to deliver the goods (in the case of a sales contract), when the start of the withdrawal period as referred to in Article 20 (2) (b) of CPL and Article 9 (2) (b) of Directive 2011/83/EU would begin.

Moreover, if the consumer paid the agreed price within the withdrawal period, which is normally the case in a distant contract, the performance would not be sufficient to produce the legal effects of the contract and the consumer would not have any tools at his disposal to activate them, as the fulfilment could not be considered a tacit waiver of the right of withdrawal, since the waiver within the time limit laid down in Article 20 of CPL is invalid (Article 69 of CPL on the imperative nature of its provisions; see also Articles 9 and 25 of Directive 2011/83/EU). Therefore, such a result stemming from the viewing of the contract between the trader and the consumer as a conditional contract would be arduous for the consumer.

Mandatory Nature of the Regulatory Framework of Articles 20-27 of CPL

The provisions of Articles 20-27 of CPL which regulate the consumer's right of withdrawal from a contract concluded at a distance or off-premises are a set of mandatory

⁶² See Koumanis (no 58) no 13.

provisions (jus cogens), as is explicitly stated in Article 69 of CPL (see also Article 25 of Directive 2011/83/EU).

In theory, there is a view⁶³ according to which the information asymmetry in distance contracts could be more effectively addressed in relation to the recognition of a mandatory right of withdrawal universally applied, if by law the consumer was granted the mandatory option between a contract without a right of withdrawal and a contract with a right of withdrawal and an increased price respectively (a model of forced choice, i.e. compulsory provision of choice to the consumer). This would give the consumer the freedom of choice between a purchase without a right of withdrawal (final) and a purchase with the additional guarantee of the right (purchase, whose validity is subject to the condition precedent of non-exercise of the right of withdrawal) and his decision would be based on his personal attitude toward risk-taking, his knowledge and experience, and the occasional level of risk premium payable for increased protection (the cost of the option will be determined by the trader's costs of performing-clearing of withdrawals, replacing any damaged or destroyed goods returned to the trader, processing requests for withdrawal, dealing with legal disputes, and so on).⁶⁴ Thus, in the view of the above, the cost of granting the right of withdrawal would be borne only by consumers who want increased protection (trade-risk intolerant) and not by everyone, to avoid cross-subsidisation, which generally leads to economically inefficient and socially unjust (re)allocations of resources and incomes.⁶⁵

In this respect, we would observe that giving the consumer the right to choose to conclude the contract with or without a right of withdrawal would be tantamount to passing on the decision on consumer protection or not (as provided by the statutory right of withdrawal) from the legislator to the consumer, which would jeopardise the latter's interest. This is because the consumer would not achieve a global and rational balance in his interests due to failure to have adequate knowledge of the functioning market. Also, the consumer's weighing as to whether the contract in question is ad-

⁶³ See Karampatzos (no 4) no 398-406 and no 416-425 with further extensive literature; see also Horst Eidenmüller, 'The Justification of Rights of Withdrawal' ('Die Rechtfertigung von Widerrufsrechten') (2010) 210 *Archiv für die civilistische Praxis* 67-104, 67, 78-81 (in German) and in detail on information asymmetry during the conclusion of the contract as a basis for the recognition of the right of withdrawal 74-81.

⁶⁴ See Karampatzos (no 4) no 399.

⁶⁵ *Ibid.* no 401-402; see also Eidenmüller (no 63) 67, 71-72, 78.

vantageous or not would be linked to the economic incentive, i.e. the lower cost of the product (or service) in the case of the contract without the right of withdrawal.

In addition, it is a fact that the cost of withdrawal incorporated in the price of the product (or service) is borne by both trade risk-tolerant and trade risk-averse consumers, as well as consumers who are prepared to exercise the right of withdrawal; it is important, however, that all categories of consumers have equal access to a right which is simple in its exercise without requiring particular knowledge or complicated procedures and discouraging formalities.⁶⁶ The introduction of such a right, which is equally accessible and easily exercised by all consumers, makes up for the cost of withdrawal, incorporated in the price of the product. Moreover, consumers can very easily switch from the group of trade risk tolerant to the group of non-tolerant ones, depending on the number of transactions concluded, the trading experience acquired, the data, and the context of each transaction. The decision on the need for a right of withdrawal, which is always ready to be activated by each category of consumer, should also consider the cost aspect of exercising the right integrated in the price of the product (or service), however, overestimating the price factor should not result in a rejection of the real value of the right.

Moreover, the trader cannot increase the price of the product excessively by invoking the cost of withdrawal, as most likely consumers — who, in the field of distance contracts have the possibility of market research in relation to the product sold or the service provided and the selection of alternative proposals from other traders — would reject the costly choice of the trader concerned (thus there is an internal assessment of a potential unaccountable lucrative practice of specific traders).

Besides, the right of withdrawal in the case of distance contracts does not have the sole purpose of protecting the consumer because he cannot check and verify the characteristics and properties described (on the trader's website), before the delivery of the product, but it is also a factor of pressure on traders to comply with a high level of pre-contractual information and consumer service (educational impact and

⁶⁶ See also Brigitta Zöchling-Jud, 'Acquis-revision', *Common European Sales Law und Verbraucherschutzrichtlinie* (2012) 212 *Archiv für die civilistische Praxis* 550, 564-565 under IV. 2 b, who argues that the existence of the right of withdrawal may lead to a reduction in consumers' reluctance to conclude a distance contract, which also serves the trader's side, and that a possible removal of the right of withdrawal, which has been embedded in the mind of the European consumer, would have been experienced by the latter as a significant step backwards; in addition, the author states that the formulation of the right of withdrawal as *jus dispositivum*, which would allow national legal orders to rule on the question of the introduction or abolition of such a right, would contest its uniform application within the framework of the single European market.

preventive function of CPL and Directive 2011/83/EU). The trader is more likely to comply with the obligations to inform consumer before the contract is concluded and describe as precisely as possible the characteristics of the product provided (or service offered), if there is a risk of a large wave of withdrawals by his customers in the event of unreliable behaviour, i.e. poor information to the consumer.

Moreover, opportunistic abusive behaviour by the consumer (e.g. temporary acquisition of the good for short-term use and subsequent return by exercising the right of withdrawal)⁶⁷ could be prevented by the tools provided by the legislator [see Article 25 (1) and (2), as well as Article 27 of CPL; see also Article 14 (1) subparagraph c in conjunction with the second paragraph and Article 16 of Directive 2011/83/EU], that is to say, by making it possible for the consumer to bear the cost of returning the goods in the event of the exercise of the right of withdrawal, by introducing the user's liability for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics, and functioning of the goods, and by establishing the list of exceptions from the right of withdrawal, where the granting of the right would amount to undue partiality for the consumer.⁶⁸

Furthermore, in relation to off-premises concluded contracts, it is argued⁶⁹ that the mandatory right of withdrawal is fully justified in the case of door-to-door contracts, where the surprise element and psychological pressure are present and compromise the rational weighting of the advantages and disadvantages of the contract in question, but it cannot be extended to all contracts negotiated off-premises without distinction. It is therefore proposed⁷⁰ that the provision of the right should be conditional on the coexistence of a socio-formal, situationally-defined, and adequately specified disturbance of the mechanism for shaping the consumer's decision to contract, which should be of a temporary nature (an overall assessment of all the specific

⁶⁷ See Karampatzos (no 4) no 398-407 on the risk of creating systemic moral hazard for transactions due to the specific opportunistic behaviour of the consumer.

⁶⁸ See Karampatzos (no 4) no 408, which adds that, in the proposed version of the compulsory option, the burden on the consumer of the return costs in combination with the small price difference between the product with or without a right of withdrawal, would be enough to prevent the opportunistic behaviour of the consumer to acquire the good with a right of withdrawal and then, following the exercise of the right, to buy the same good without the right at a cheaper price, also no. 415.

⁶⁹ See Karampatzos (no 4) no 427-433; see also Zöchling-Jud (no 66) 550, 566 under IV. 2 b, who is skeptical about extending the right of withdrawal to all forms of off-premises contract, such as those launched by the consumer himself, where there is no risk of surprise.

⁷⁰ See Karampatzos (no 4) no 432.

parameters of the particular transaction according to the standard of a *Wilburg*⁷¹ mobile system).

In this respect, it could be observed that the legislator⁷² grants the right of withdrawal to the consumer, who deals with a trader off-premises (at home or at his workplace), as in these trading circumstances he may potentially be under psychological pressure or in surprise, even regardless of whether the consumer has requested the trader's visit or not, that is, whether the consumer is actually in a state of surprise or has been informed of such offers and has been properly prepared to make a decision on the solid ground of a more calm and rational weighing of the situation. Consumer protection is therefore important, not because, in the context of a specific transaction, he/she was actually in a position of surprise and psychological stress, but because of the risk of the transaction in question, in the sense that the trader should either be discouraged from using this off-premises contract practice or contribute on his/her own initiative to inform and prepare the consumer for a rational decision on it in the best way possible.

Moreover, if it had to be investigated in each individual case whether the consumer is actually in a situation of surprise and intense pressure and how long this state lasts (facts which are by their very nature vague and difficult to ascertain), the most likely result would be time consuming and chaotic (by successive preliminary questions to the CJEU by national courts), involving the parties in litigation in order to determine whether or not the transaction in question falls within those which need to be protected by granting the right of withdrawal, ultimately putting legal certainty and trading stability⁷³ at risk.

Of course, the list of exceptions from the right of withdrawal provided for in Article 27 of CPL (see also Article 16 of Directive 2011/83/EU) may be extended over

⁷¹ See Walter Wilburg, 'Development of a Movable System in Civil Law' (Speech given at the inauguration as Rector magnificus of the Karl-Franzens-University of Graz) ('Entwicklung eines beweglichen systems im bürgerlichen Recht', *Rede, gehalten bei der Inauguration als Rector magnificus der Karl-Franzens-Universität in Graz*) (Graz: Kienreich, 1950), 1-26 (in German).

⁷² See Recitals 21 and 37 of Directive 2011/83/EU, which refers to 'potential surprise element and/or psychological pressure'.

⁷³ See also Loos (no 4) 16-17 under 5, who, referring to the possibility of consumers abusing their right of withdrawal, concludes that, in the interests of legal certainty, a tough and speedy rule is preferable, allowing consumers to withdraw, when the conditions laid down are met, from a rule, which takes into account individual circumstances relating to the consumer concerned and leaves room for litigation on the question of whether the individual circumstances justify a limitation of the right of withdrawal in this case.

time either by adding new cases or by a broad interpretation of existing ones, as the regulatory framework for consumer protection is evolving in the context of the ever-changing transactions and is adapting to the needs of each time.⁷⁴ However, this should be done with caution and prudence and on the basis of acknowledgement of the rule of the right of withdrawal granted to distance or off-premises contracts and the trading stability, which this rule provides, and not by conversion (or the possibility of conversion) of the exception to a rule, since the purpose of introducing the right of withdrawal would remain unfulfilled and the legislative effort to develop the right would be like 'drawing water from the pithos of the Danaides'⁷⁵.

Concluding Remarks

The consumer's right of withdrawal from a distance or off-premises contract as provided for in Articles 20-27 of CPL is a concept which is interdependent with the various everyday transactions [this is also reflected in the legislative effort to improve the existing consumer protection regulatory framework by establishing Directive 2019/2161/EU in relation to rapidly evolving digital transactions (e.g. online markets, social media, search engines, comparison websites) and new forms of online contracts (for example, digital services provided in exchange for personal data)].

For the right of withdrawal to produce its legal effects, the consumer's perception is of great importance, as regards the interpretation and the application of the relevant provisions. The consumer is the most vulnerable party in the negotiation, as he/she may enter into the contract under risky conditions for his/her contractual self-determination, either due to information asymmetry between consumer and trader, as is the case with distance contracts, or due to the surprise element and/or psychological pressure, as is the case with off-premises contracts. However, the position, self-determination, interest, and need for protection of the consumer within the system, as well as the complexity of daily transactions make sense only when

⁷⁴ See also Karampatzos (no 4) no 433 on the fact that the list of exceptions in Directive 2011/83/EU cannot be regarded as restrictive, where it is objectively not possible to exhaust all those cases where the right of withdrawal is unduly favourable to the consumer [see also the example of forward contracts the actual value of which is dependent on fluctuations in the market [Article 16 (g) of Directive 2011/83/EU], where, in addition to the category of supply of alcoholic beverages, other categories of goods (or services) that can be sold under the terms of a forward contract (e.g. wheat, nuts) should be included, according to the author].

⁷⁵ According to Greek mythology, the Danaides (all but one, Hypermnestra), in punishment for having murdered their husbands on their wedding night, were condemned after their death to keep filling with water a perforated jar (pithos) to wash off their sins. Due to the leak, the jar could never be filled. The myth reflects the futility of a repetitive task that can never be completed.

assessed together with the interest of the trader, as the main issue is weighing and balancing the conflicting interests of both parties in the light of the harmonising principle of proportionality⁷⁶ with a view to legal certainty, strengthening confidence, and encouraging consumers to participate in e-commerce, stimulating the ever-expanding scope of online transactions and creating a well-functioning market.

⁷⁶ See on the principle of proportionality and the EU consumer protection objective, Articles 4 (2) (f), 5 (1) and (4), 12, 114 (3), 169 and 296 of the Consolidated version of the Treaty of the European Union and of the Treaty on the Functioning of the European Union 2016/C 202/01; see further on the principle of proportionality as a tool for weighing, balancing and harmonising equivalent, but conflicting, constitutionally established interests in the context of private law, Philippos Doris, ‘The Importance of the Principle of Proportionality on Conflicting Rights in Property Law’ (‘Η Σημασία της Αρχής της Αναλογικότητας επί Συγκρούσεως Δικαιωμάτων στο Εμπράγματο Δίκαιο’) in Michael Stathopoulos, Kostas Beys, Philippos Doris, Ioannis Karakostas (eds) *In Honour of Apostolos S. Georgiades*, Vol. I (Athens-Thessaloniki: Ant. N. Sakkoulas Publications, 2006) 249-277 (in Greek); Id., ‘The Principle of Proportionality in the Case Law of the Civil Courts’ (‘Η Αρχή της Αναλογικότητας στη Νομολογία των Πολιτικών Δικαστηρίων’) (2005) *Journal of Human Rights – Issue Out of Series III/2005* 25-39 (in Greek); Id., ‘The Principle of Proportionality in the Field of Regulation of Private Relations and in Particular in Civil Law’ (‘Η Αρχή της Αναλογικότητας στο Πεδίο Ρύθμισης των Ιδιωτικού Δικαίου Σχέσεων και Ιδιαίτερα στο Αστικό Δίκαιο’) in *Honorary Volume for the 75 years of the Council of State* (Athens-Thessaloniki: Sakkoulas Publications, 2004) 229-249 (in Greek); Evangelos Beys, ‘The Principle of Proportionality; From Public to Civil and Administrative Procedural Law and Private Law’ (‘Η Αρχή της Αναλογικότητας – από το Δημόσιο στο Αστικό και Διοικητικό Δικονομικό και Ιδιωτικό Δίκαιο–’) (1999) 30 *Diki* 467-498 (in Greek); Ioannis Sontis, *Mandatory Easements in Accordance with the Civil Code (CC 1012-1017, 1028-1031)* [Αι Αναγκαστικά Δουλείαι κατά το Δίκαιον του Αστικού Κώδικος (AK 1012-1017, 1028-1031)] (Athens: Ant. N. Sakkoulas, 1981) (in Greek); Fotios Nikolaou, *Acquisition of Ownership of a Movable by a Good Faith Transferee (Κτήση Κυριότητας Κινητού από Καλόπιστο Συναλλασσόμενο)* (Athens: Nomiki Vivliothiki, 2014) 35-41 (in Greek); Id., ‘Bona fide Acquisition of Stolen or Lost Movables Sold in a Market (CC 1039 sec. b ’) [‘Η Καλόπιστη Κτήση της Κυριότητας Κλοπιμαίων ή Απολωλότων Κινητών Εκποιηθέντων σε Αγορά (AK 1039 εδ. β ’)]’ (2014) *Civil Law & Civil Procedure Applications* 822, 823-825 (in Greek); Id., ‘The Legislative Attempt to Harmonise Conflicting Constitutional Rights in the Scope of Civil law and the Importance of the Balancing Principle of Proportionality’ (‘Η Νομοθετική Ρυθμιστική Επέμβαση επί Συγκρούσεως Συνταγματικώς Κατοχυρωμένων Δικαιωμάτων στο Πεδίο του Αστικού Δικαίου και η Σημασία της Εναρμονιστικής Αρχής της Αναλογικότητας’) in Stergios Mitas, Costas Stratilatis, Iordanis Koumasidis (eds), *Power and Law (Η Ισχύς & το Δίκαιο)* (Athens - Nicosia: Hippasus Legal Publications, 2019) 209-217 (in Greek); see also under German private law, Claus-Wilhelm Canaris, ‘Effects of Fundamental Rights and the Principle of Proportionality in the Judicial Application and Further Development of Private Law’ (‘Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatrechts’) (1989) *Juristische Schulung*, 161-172 (in German); Johannes Hager, Protection of Transactions through Bona Fide Acquisition (*Verkehrsschutz durch redlichen Erwerb*), *Münchener Universitätsschriften: Reihe der Juristischen Fakultät*, Bd. 77, (München: Beck, 1990), Kapitel 2., para 3 Die (“Dritt-”) Wirkung der Grundrechte, insbesondere des Art. 14 GG, für bürgerlich-rechtliche Gesetze, 9-46 and in particular V., 40-46 (in German).

The information asymmetry about the functioning of the market and the risks to the consumer in the constantly evolving trader practices is balanced by the introduction of the mandatory right of withdrawal, i.e. a right exercised in a simple and uncomplicated manner and equally accessible to all consumers (whether more or less trade-risk-tolerant). The abovementioned —altering the contractual relationship— right entails a retroactive reversal of the primary obligations already fulfilled and the cancellation of unfulfilled ones, without prejudice to any ancillary obligations arising therefrom, such as behavioural obligations in particular (e.g. loyalty, protection) designed to achieve the purpose of the contract or protect absolute rights of the person, the infringement of which may give rise to claims for compensation [see, for example, the obligation to compensate the trader under Article 25 (2) of CPL].

References

- Argyros G., ‘The Right of Withdrawal of the Consumer in Common European Sales Law’ (‘Το Δικαίωμα Υπαναχώρησης του Καταναλωτή στο Κοινό Ευρωπαϊκό Δίκαιο Πωλήσεων’) (2014) 2 *Civil Law & Civil Procedure Applications* 105-114 (in Greek).
- Beys Ev., ‘The Principle of Proportionality –From Public to Civil and Administrative Procedural Law and Private Law–’ (‘Η Αρχή της Αναλογικότητας –από το Δημόσιο στο Αστικό και Διοικητικό Δικονομικό και Ιδιωτικό Δίκαιο–’) (1999) 30 *Diki* 467-498 (in Greek).
- Canaris, C-W., ‘Effects of Fundamental Rights and the Principle of pPoportionality in the Judicial Application and Further Development of Private Law’ (‘Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatrechts’) (1989) *Juristische Schulung* 161-172 (in German).
- Chelidonis A., ‘Article 382’ in Apostolos Georgiades (ed.), *Short Interpretation of the Civil Code I* (Articles 1-946) [Σύντομη Ερμηνεία του Αστικού Κώδικα I (Άρθρα 1-946)] (Athens: P. N. Sakkoulas, 2010) 759-766 (in Greek).
- Commission notice, ‘Guidance on the Interpretation and Application of Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights (Text with EEA relevance) [2021] OJ C 525.
- Commission, ‘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

- amending Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council' (DG Justice Guidance Document)(2014).
- Doris Ph., 'The Importance of the Principle of Proportionality on Conflicting Rights in Property Law' ('Η Σημασία της Αρχής της Αναλογικότητας επί Συγκρούσεως Δικαιωμάτων στο Εμπράγματο Ίκαιο') in Michael Stathopoulos, Kostas Beys, Philippos Doris, Ioannis Karakostas (eds) *In Honor of Apostolos S. Georgiades*, Vol. I (Athens-Thessaloniki: Ant. N. Sakkoulas Publications, 2006) 249-277 (in Greek).
- Doris Ph., 'The Principle of Proportionality in the Case Law of the Civil Courts' ('Η Αρχή της Αναλογικότητας στη Νομολογία των Πολιτικών Δικαστηρίων') (2005) *Journal of Human Rights – Issue Out of Series III/2005* 25-39 (in Greek).
- Doris Ph., 'The Principle of Proportionality in the Field of Regulation of Private Relations and in Particular in Civil Law' ('Η Αρχή της Αναλογικότητας στο Πεδίο Ρύθμισης των Ιδιωτικού Δικαίου Σχέσεων και Ιδιαίτερα στο Αστικό Δίκαιο') in *Honorary Volume for the 75 Years of the Council of State* (Athens-Thessaloniki: Sakkoulas Publications: 2004) 229-249 (in Greek).
- Eidenmüller H., 'The Justification of Rights of Withdrawal' ('Die Rechtfertigung von Widerrufsrechten') (2010) 210 *Archiv für die civilistische Praxis* 67-104 (in German).
- Georgiades Ap., *Manual of Special Contract Law (Εγχειρίδιο Ειδικού Ενοχικού Δικαίου)* (Athens: P. N. Sakkoulas, 2014) (in Greek).
- Giovannopoulos R., N. Eleftheriadis, 'Articles 3, 3a-3m' in Elisa Alexandridou (ed.), *Consumer Protection Law, Greek-EU, Interpretation by Article of Law 2251/1994 and Other Relevant Legislation (Δίκαιο Προστασίας Καταναλωτή, Ελληνικό-Ενωσιακό, Κατ' άρθρο ερμηνεία του Ν. 2251/1994 και Άλλων Σχετικών Νομοθετημάτων)* (3rd edn, Athens: Nomiki Vivliothiki, 2018) 167-258 (in Greek).
- Hadjinestoros E., G. Charalambous, *The Sale of Goods and Consumer Protection in Cyprus (Κυπριακό Δίκαιο Πώλησης Αγαθών και Προστασία Καταναλωτή)* (Athens: Nomiki Vivliothiki, 2016) (in Greek).
- Hager J., *Protection of Transactions through Bona Fide Acquisition (Verkehrsschutz durch redlichen Erwerb)*, Münchener Universitätschriften: Reihe der Juristischen Fakultät, Bd. 77, (München: Beck, 1990) (in German).
- Karakostas I., *Consumer Protection Law, Law 2251/1994 Interpretation - Case-law - Practical application (Δίκαιο Προστασίας Καταναλωτή Ν. 2251/1994*

- Ερμηνεία - Νομολογία - Πρακτική εφαρμογή*) (3rd edition, Athens: Nomiki Vivliothiki, 2016) (in Greek).
- Karampatzos A., *Private Autonomy and Consumer Protection – A Contribution to Behavioural Economic Analysis of Law (Ιδιωτική Αυτονομία και Προστασία του Καταναλωτή – Μία Συμβολή στην Συμπεριφορική Οικονομική ανάλυση του Δικαίου)* (Athens: P. N. Sakkoulas, 2016) (in Greek).
- Koumanis S., 'Article 389' in Georgiades Apostolos (ed.), *Short Interpretation of the Civil Code I (Articles 1-946) [Σύντομη Ερμηνεία του Αστικού Κώδικα I (Άρθρα 1-946)]* (Athens: P. N. Sakkoulas, 2010) 800-805 (in Greek).
- Loos M., 'Rights of Withdrawal', *Centre for the Study of European Contract Law - Working Paper Series No. 2009/04* (2009), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1350224 (last accessed 24 March 2022) 1-31.
- Nikolaou F., *Acquisition of Ownership of a Movable by a Good Faith Transferee (Κτήση Κυριότητας Κινητού από Καλόπιστο Συναλλασσόμενο)* (Athens: Nomiki Vivliothiki, 2014) (in Greek).
- Nikolaou F., 'Bona Fide Acquisition of Stolen or Lost Movables Sold in a Market (CC 1039 sec. b')' ['Η Καλόπιστη Κτήση της Κυριότητας Κλοπιμαίων ή Απολωλότων Κινητών Εκποιηθέντων σε Αγορά (ΑΚ 1039 εδ. β')'] (2014) *Civil Law & Civil Procedure Applications* 822-832 (in Greek).
- Nikolaou F., 'The Legislative Attempt to Harmonise Conflicting Constitutional Rights in the Scope of Civil Law and the Importance of the Balancing Principle of Proportionality' ('Η Νομοθετική Ρυθμιστική Επέμβαση επί Συγκρούσεως Συνταγματικώς Κατοχυρωμένων Δικαιωμάτων στο Πεδίο του Αστικού Δικαίου και η Σημασία της Εναρμονιστικής Αρχής της Αναλογικότητας') in Stergios Mitas, Costas Stratilatis, Iordanis Koumasidis (eds), *Power and Law* (Athens - Nicosia: Hip-pasus Legal Publications, 2019) 209-217 (in Greek).
- Pantelidou R., 'Self-Commitment and Release in Off-Premises Contracts' ('Αυτοδέσμευση και Αποδέσμευση στις Συμβάσεις που Καταρτίζονται εκτός Εμπορικού Καταστήματος') (1995) 7 *Armenopoulos* 877-883 (in Greek).
- Papanikolaou P., 'Article 389' in Apostolos S. Georgiades, Michael P. Stathopoulos (eds) *Civil Code, Interpretation by Article - Case law - Bibliography, Volume II, General Contract Law (Articles 287-495) [Ερμηνεία κατ' άρθρο - Νομολογία - Βιβλιογραφία, Τόμος II, Γενικό Ενοχικό (Άρθρα 287-495)]*, Athens: P. N. Sakkoulas, 1979) 376-380 (in Greek).

- Reiner G., 'The Consumer-Protecting Right of Withdrawal in the Law of Declarations of Will' ('Der verbraucherschützende Widerruf im Recht der Willenserklärungen') (2003) 203 *Archiv für die civilistische Praxis* 1-45 (in German).
- Schärfl C., 'The Consumer-Protecting Right of Withdrawal from Off-Premises and Distant Contracts' ('Der verbraucherschützende Widerruf bei außerhalb von Geschäftsräumen geschlossenen Verträgen und Fernabsatzverträgen') (2014) 7 *Juristische Schulung* 577-583 (in German).
- Sontis I., *Mandatory Easements in Accordance with the Civil Code (CC 1012-1017, 1028-1031) [Αι Αναγκαστικά Δουλεία κατά το Δίκαιον του Αστικού Κώδικος (AK 1012-1017, 1028-1031)]* (Athens: Ant. N. Sakkoulas, 1981) (in Greek).
- Stathopoulos M., *Epitome of General Contract Law (Επιτομή Γενικού Ενοχικού Δικαίου)* (Athens - Thessaloniki: Sakkoulas Publications, 2016) (in Greek).
- Weatherill S., *EU Consumer Law and Policy* (2nd edn, Cheltenham, UK/Northampton, MA, USA: Elgar European Law, 2013) (in English).
- Wilburg W., 'Development of a Movable System in Civil Law' (Speech given at the inauguration as Rector magnificus of the Karl-Franzens-University of Graz) ('Entwicklung eines beweglichen systems im bürgerlichen Recht' *Rede, gehalten bei der Inauguration als Rector magnificus der Karl-Franzens-Universität in Graz*) (Graz: Kienreich, 1950), 1-26 (in German).
- Zöchling-Jud B., 'Acquis-revision, *Common European Sales Law* und Verbraucherrechterichtlinie' (2012) 212 *Archiv für die civilistische Praxis* 550-574 (in German).