COURT OF JUSTICE
OF THE EUROPEAN UNION

THE COURT OF JUSTICE AND CONSUMER RIGHTS

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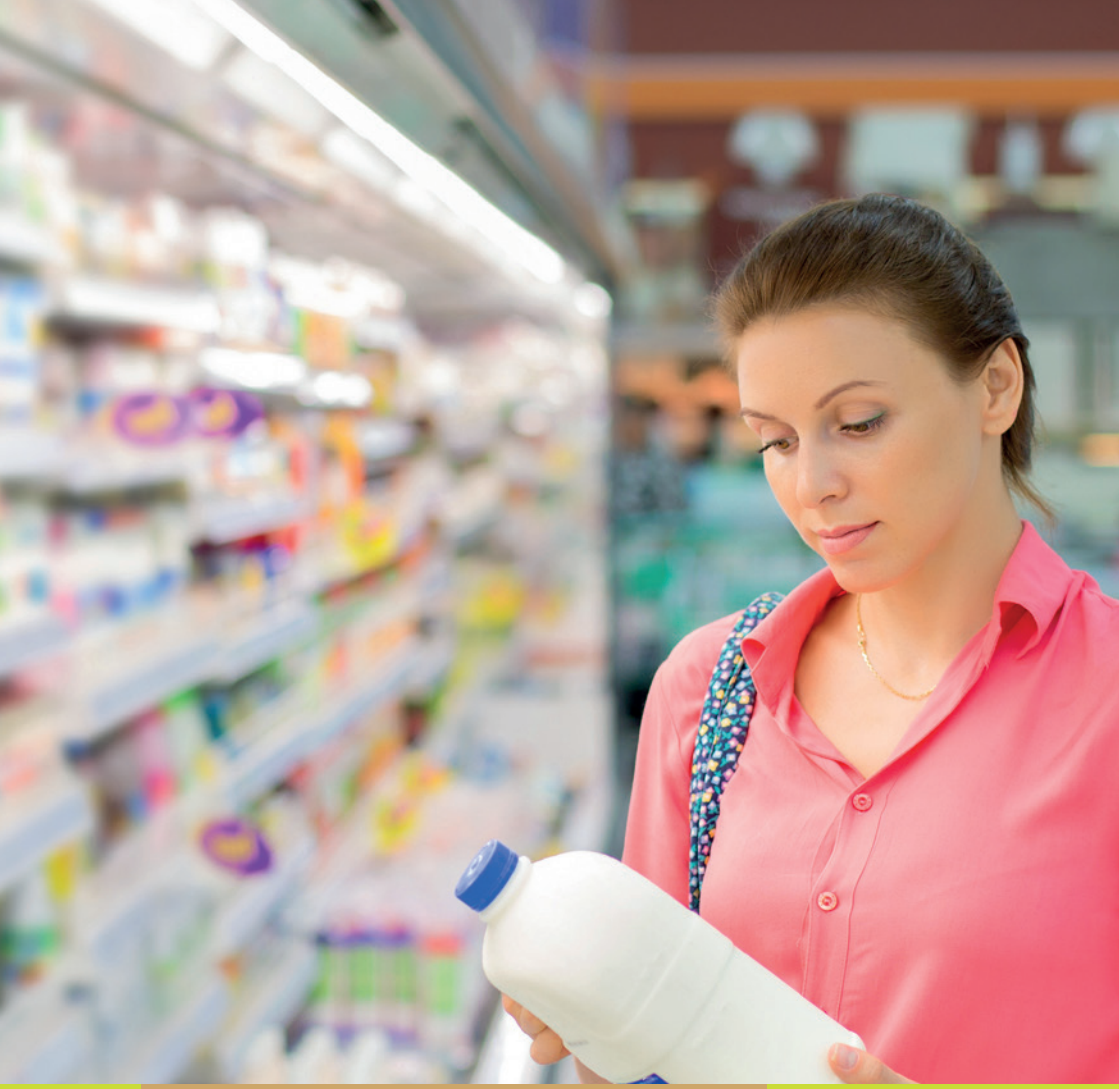
INTRODUCTION

Since 1952, the Court of Justice of the European Union (CJEU) has ensured that EU law is respected and correctly applied in the Member States. Over the years, it has delivered judgments which have reinforced European integration while granting citizens, and in particular consumers, ever more extensive rights. The following pages present a selection of notable judgments of the Court, classified on a thematic basis.

In each of the cases mentioned in the present brochure, the Court did not create the rights in question itself; it derived them or clarified them by interpreting EU regulations or directives.

FOOD AND DRINK

Nowadays, nutrition is a very important issue for consumers, who want to be adequately informed about the food and drink that they purchase and who are increasingly mindful of the importance of a healthy, balanced diet.

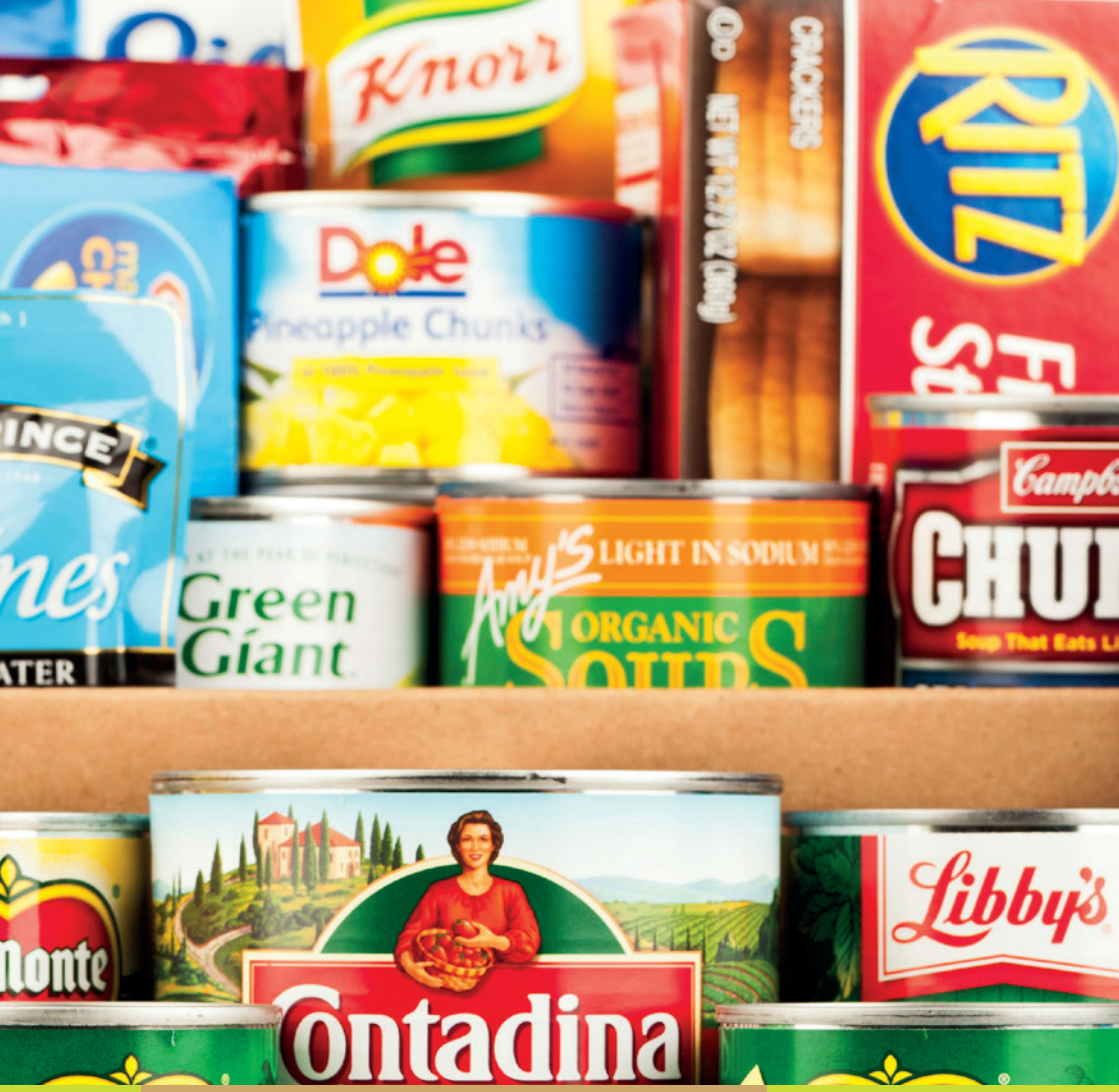


FOOD AND DRINK

Labelling requirements

In 2015, the Court reiterated that consumers must be provided with correct, neutral and objective information. Thus, if the labelling of a product gives the impression that it contains a particular ingredient which is actually not present in the product, the purchaser could be misled, even if the list of ingredients is correct. Such was the case of a fruit tea, the packaging of which depicted raspberries and vanilla flowers, even though the tea did not contain any natural ingredients from those fruits (judgment of 4 June 2015, *Teekanne*, C-195/14).

In addition, the sodium content indicated on the packaging of bottles of mineral water must reflect the total amount of sodium in all its forms (table salt and sodium bicarbonate). The consumer might be misled if mineral water were to be described as low in salt, even though it contained high levels of sodium bicarbonate (judgment of 17 December 2015, *Neptune Distribution*, C-157/14).



FOOD AND DRINK

Health claims and designations

The Court ruled in 2017 that the Commission was right to refuse to authorise the use of certain health claims in the marketing of glucose, such as 'glucose contributes to normal energy-yielding metabolism' or 'glucose supports normal physical activity'. Such claims encourage the consumption of sugar, whereas encouraging the consumption of sugar goes against generally accepted nutritional and health principles (judgment of 8 June 2017, *Dextro Energy v Commission*, C-296/16 P).

In addition, purely plant-based products cannot, in principle, be marketed with designations such as 'milk', 'cream', 'butter', 'cheese' or 'yoghurt', which are reserved for products of essentially animal origin. Thus, a company cannot use the designations 'soja milk', 'tofu butter' or 'plant cheese', although there are certain exceptions laid down in the EU legislation, such as, for example, 'coconut milk' (judgment of 14 June 2017, *Tofu Town.com*, C-422/16).

UNFAIR COMMERCIAL PRACTICES

EU law prohibits unfair, misleading and aggressive commercial practices likely to distort consumers' economic behaviour. The Court has developed an extensive body of case-law on the subject, a few examples of which are mentioned below.

UNFAIR COMMERCIAL PRACTICES

Combined offers

Member States may not impose an absolute prohibition on combined offers made by a vendor to a consumer (such as, for example, a petrol station which offers free breakdown services for three weeks with every purchase of at least 25 litres of fuel). Combined offers cannot be regarded, in all circumstances, as unfair commercial practices (judgment of 23 April 2009, *VTB-VAB and Galatea*, C-261/07 and C-299/07).

A combined offer consisting of the sale of a computer equipped with pre-installed software does not constitute, in itself, an unfair commercial practice. Moreover, failure to indicate the price of each pre-installed software program cannot be regarded as a misleading commercial practice, since the price of the various software programs does not constitute material information for the consumer (judgment of 7 September 2016, *Deroo-Blanquart*, C-310/15).

UNFAIR COMMERCIAL PRACTICES

Aggressive and misleading commercial practices

Aggressive practices by traders which give the consumer a false impression that he has won a prize, whereas he actually has to incur some cost in order to receive it, are prohibited. This is particularly true of promotions which give the recipient the impression that he has won a cruise, but in order to receive that prize he must pay insurance, a cabin supplement and, during the voyage, the cost of food and drink, plus port fees (judgment of 18 October 2012, *Purely Creative*, C-428/11).

Statutory health insurance funds may also be held liable for unfair commercial practices. Thus, it is a misleading practice for a health insurance fund to indicate to its members that they risk incurring financial losses if they leave that fund for another (judgment of 3 October 2013, *Zentrale zur Bekämpfung unlauteren Wettbewerbs*, C-59/12).

Lastly, the cost of a call to an after-sales telephone number must not exceed the cost of a standard call, otherwise it will constitute an unfair commercial practice (judgment of 2 March 2017, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, C-568/15).

MAIL-ORDER SALES

In the digital age, mail-order sales have become a common transaction in everyday life. The Court has clarified, on several occasions, the rights of consumers in the context of such sales contracts.

The cost of delivering goods must not be charged to a consumer who exercises his right of withdrawal (a right which must be exercised within a period of at least seven working days from the date of sale). The consumer may, however, be charged for the cost of returning the goods (judgment of 15 April 2010, *Heinrich Heine*, C-511/08).

In addition, a consumer who exercises his right of withdrawal is not required to compensate the seller for the use of the goods, unless he has used those goods in an unreasonable manner. The effectiveness of the right of withdrawal would be undermined if the consumer had to pay compensation simply because he had examined and tested the goods acquired via mail order (judgment of 3 September 2009, *Pia Messner*, C-489/07).

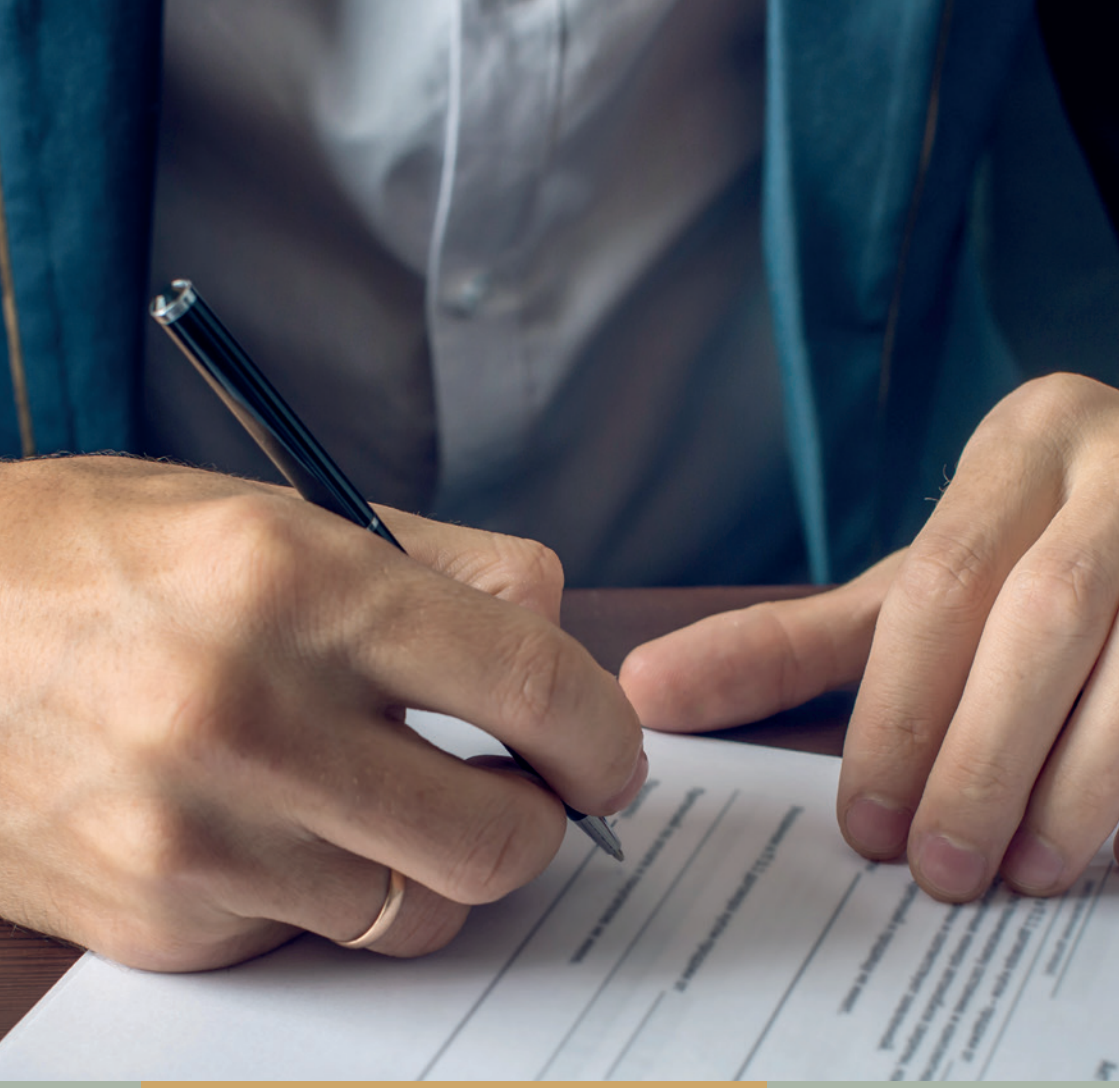
DEFECTIVE GOODS

The Court has also had occasion to clarify the rights of consumers where they claim that a product delivered to them is defective.

In 2015, the Court held that any lack of conformity which becomes apparent within six months of the delivery of goods is to be presumed to have existed at the time of delivery. Thus, although the consumer must prove that a lack of conformity exists and that it became apparent within six months, he is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller (judgment of 4 June 2015, *Froukje Faber*, C-497/13).

If defective goods are replaced, the consumer is not required to pay compensation to the seller for the use of the defective goods (judgment of 17 April 2008, *Quelle*, C-404/06). In addition, the seller must remove the defective goods and install the replacement goods, or bear the necessary cost of those operations (judgment of 16 June 2011, Gebr. *Weber and Putz*, C-65/09 and C-87/09).

Lastly, where there is a lack of scientific consensus, the proof of a defect in a vaccine and of a causal link between that defect and a disease may be made out by serious, specific and consistent evidence, such as the temporal proximity between the administering of a vaccine and the occurrence of a disease, the lack of any personal or family history of the disease on the part of the person vaccinated and the existence of a significant number of reported cases (judgment of 21 June 2017, *W and Others*, C-621/15).



INSURANCE CONTRACTS

Insurance contracts have become indispensable in today's world. Here too, the Court has been called upon to clarify the rules in relation to those contracts.

In 2011, the Court held that taking the gender of the insured individual into account as a risk factor in insurance contracts constitutes discrimination. That is why unisex premiums and benefits have been applied in the European Union since 21 December 2012 (judgment of 1 March 2011, *Association belge des consommateurs Test-Achats and Others*, C-236/09).

An insurance contract must also set out transparently, in plain, intelligible language, the functioning of the insurance arrangements, so that the consumer concerned can evaluate the economic consequences which derive from it (judgment of 23 April 2015, *Jean-Claude Van Hove*, C-96/14).

Lastly, a person selling air travel may not include flight cancellation insurance in the price of the ticket as a default setting. Such insurance is an optional price supplement, which must be communicated in a clear way at the start of each booking process, and its acceptance by the purchaser must be on an opt-in basis (judgment of 19 July 2012, *ebooker.com Deutschland*, C-112/11).

DOORSTEP SELLING

EU law also protects the rights of consumers who conclude contracts in a doorstep-selling situation. The Court of Justice has ruled on several cases in this field, in particular as regards the right, for any consumer, to cancel such a contract within seven days of its conclusion.

A consumer who enters into a loan agreement in a doorstep-selling situation does not lose his right of cancellation if he has not been informed of that right. Thus, a consumer who learns, five years later, that he had a right of cancellation, of which he was not informed by the bank at the time when the contract was concluded, may exercise that right (judgment of 13 December 2001, *Heininger*, C-481/99).

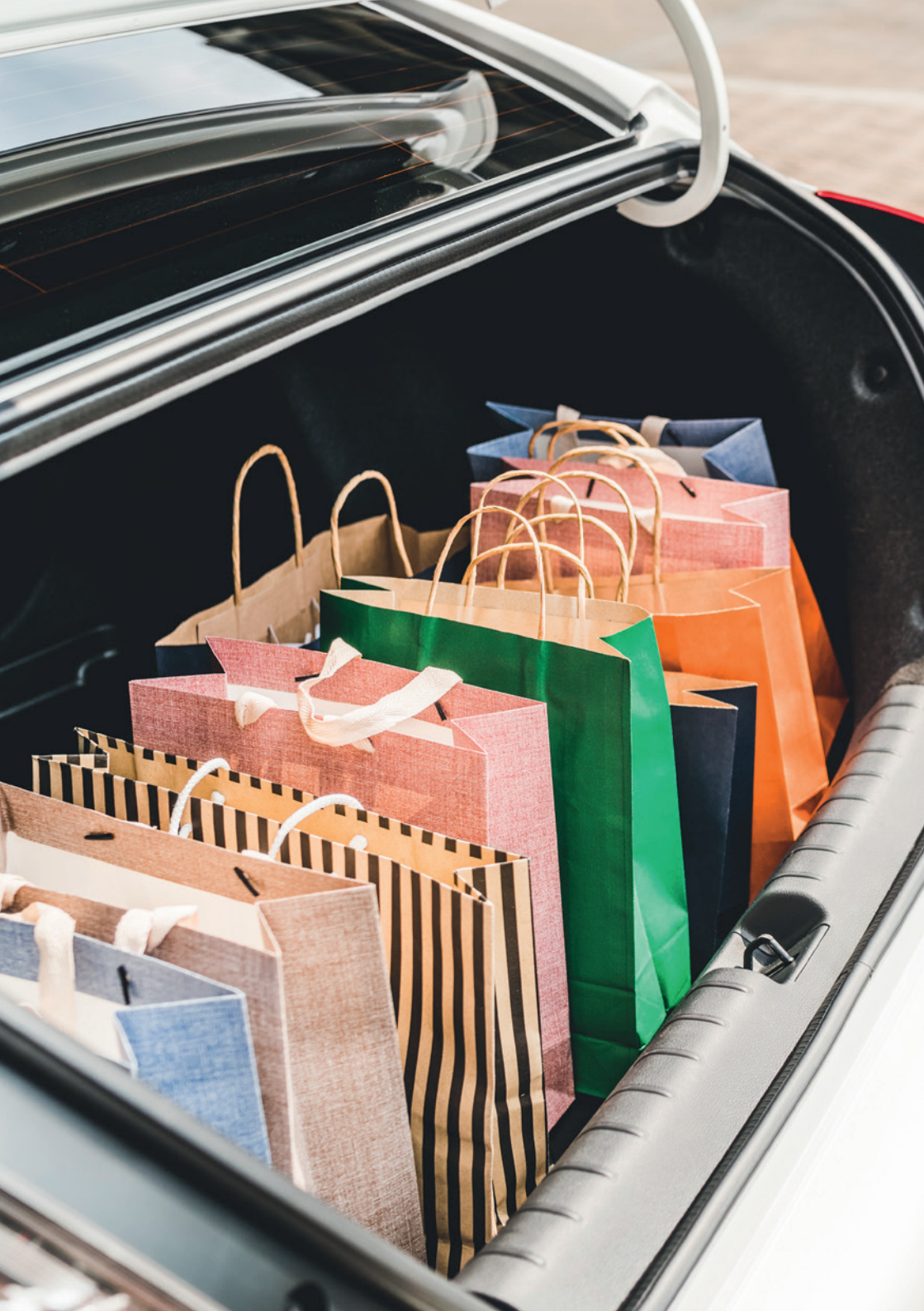
In the same vein, if a bank fails to inform a consumer of his right to cancel a loan agreement concluded in a doorstep-selling situation, that bank must bear the risks inherent in the investment scheme concerned (judgment of 25 October 2005, *Schulte*, C-350/03 and C-229/04).

UNFAIR TERMS

An EU directive provides that consumers are not bound by unfair terms in a contract concluded with a seller or supplier. The Court has ruled on numerous cases in this field and has clarified the scope of that directive.

The Court first of all clarified that national courts are required to examine, of their own motion, whether a term contained in a contract may possibly be unfair. That rule, which also applies to insolvency proceedings, does not allow the court to revise the content of the term, but may lead it solely to set that term aside (judgments of 4 June 2009, *Pannon GSM*, C-243/08; of 21 April 2016, *Radlinger and Radlingerová*, C-377/14; of 14 June 2012, *Banco Español de Crédito*, C-618/10).

In addition, it is not possible to impose a temporal limitation on the effects of the invalidity of 'floor clauses' (clauses requiring the consumer to pay a minimum amount of interest) included in mortgage loan contracts concluded with consumers (judgment of 21 December 2016, *Gutiérrez Naranjo*, C-154/15, C-307/15 and C-308/15). Lastly, when a financial institution grants a loan denominated in a foreign currency, it must provide the borrower with sufficient information to enable the latter to take a prudent and well-informed decision (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16).



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