Pamaria Rekaiti and Roger Van den Bergh

Cooling-Off Periods in the Consumer Laws of the EC Member States. A Comparative Law and Economics Approach

ABSTRACT. Lawyers tend to see cooling-off periods in consumer laws as a remedy for the problems caused by unequal bargaining power between sellers of goods and consumers. This article takes a different approach and argues that cooling-off periods can be seen as efficiency-enhancing devices. From an economic point of view, cooling-off periods provide a remedy for irrational behaviour on the part of consumers and may cure market failures, in particular problems caused by situational monopolies and asymmetric information. In spite of these important benefits, the economic approach also warns against possible disadvantages. The latter range from a moral hazard problem on the side of the consumer to the adverse counter-productive effects of cooling-off periods. A legislator who is informed by economic analysis may design cooling-off periods in ways that maximise their ability to cure inefficiencies and at the same time minimise their potential detrimental effects. Unfortunately, the relevant EC Directives and the current consumer laws of the Member States are not in perfect harmony with an efficiency enhancing-approach.

The consumer protection laws of the EC Member States tend to be viewed as sets of rules aimed at protecting weak consumers from manipulations and abuses by producers and traders and at strengthening the formers' bargaining position. The provisions on cooling-off periods should support consumers in the unequal battle they must fight within the market environment. A cooling-off period is a specified period of time, within which the consumer has the right to withdraw from a concluded contract. It is also referred to as a right to cancellation, as a right to rescind, disaffirm, or revoke a contract, or more generally as a withdrawal right. A related protective measure is the right to a period of deliberation, during which the consumer is not allowed to accept the offer made and conclude the contract.

Taking a comparative approach towards the fifteen national consumer protection laws in the EC Member States and the relevant EC Directives, this paper expresses the view that the establishment of cooling-off periods may be supported by economic reasons. The comparative economic analysis of law presented here is both positive and normative. It is positive to the extent that the paper seeks to

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explain the provision of cooling-off periods as an endeavour by the legislator to correct market inefficiencies. At the same time it takes a normative stand, as it attempts, using economic insights, to show how cooling-off periods should be designed in order to be optimal remedies to the said inefficiencies. This normative approach, based on positive theory, leads us to some interesting suggestions for policy purposes.

The paper is structured as follows. In the first part, the rationale behind the establishment of cooling-off periods is presented. After a short discussion of the traditional arguments advanced in the legal literature – which sees cooling-off period provisions as a regulatory instrument improving the bargaining position of consumers – the question whether cooling-off periods may be explained by economic criteria will be dealt with. The central questions of the analysis are the following: Do cooling-off periods provide a remedy for irrational behaviour on the part of consumers, particularly with respect to the observed "temporary madness," from which consumers may suffer when making certain purchasing decisions? Can cooling-off periods be understood as provisions needed to correct market failures, in particular situational monopolies and asymmetric information? A positive answer to the above questions may easily lead to the proposition that consumers laws should generalise their application. However, before jumping to this conclusion, it is necessary to focus also on the possible disadvantages of cooling-off period provisions. These range from a moral hazard problem on the side of the consumer to their potential of causing adverse, counter-productive effects. Before normative conclusions may be reached, account should also be taken of the delay and increased uncertainty of the transactions concerned that are generated by the application of cooling-off periods.

An evaluation of the legal rules applicable in the fifteen EC Member States and the relevant EC Directives follows in the second part. The economic analysis presented in this part of the paper will try to give an answer to the question whether and to what extent the current rules succeed or fail to provide for an adequate remedy to the inefficiencies described in the previous part, particularly the problems of asymmetric information. At the same time, the effectiveness of the current rules in minimising the costs associated with the use of cooling-off periods is investigated. This analysis will also allow us to suggest how the shortcomings of the current legislation could be eliminated or at least reduced. A legislator who is informed by

economic analysis may design cooling-off periods in ways that maximise their ability to cure inefficiencies and at the same time minimise their potential detrimental effects. Finally, some conclusions will be presented.

THE RATIONALE BEHIND COOLING-OFF PERIODS

Traditional Justification Found in the Legal Literature

Cooling-off periods in the context of consumer protection legislation constitute mandatory contract terms. The reason for their introduction does not depart from the traditional legal justification for the emergence of consumer law in general: the need to promote the interests of the weak consumer in the face of the economic power and advanced knowledge of his partners in the marketplace. Consumers are seen as less knowledgeable and economically inferior to producers and traders (Alexandridou, 1996; Bourgoignie, 1992; Harvey & Parey, 1992, p. 19; Stathopoulos, Chiotellis, & Augoustianakis, 1995; Weatherill, 1997, p. 60). Abuse of the weakness and ignorance of the consumer is a serious risk when certain marketing and sales techniques, such as door-to-door or mail-order sales, are employed. Many characteristics of door-to-door contracts are deemed to justify special rules for consumer protection and, in particular, the provision of a cooling-off period. The contractual negotiations are normally undertaken on the initiative of the trader, and the consumer is often unprepared for such negotiations and taken by surprise (Karakostas, 1994, p. 72; Stathopoulos et al., 1995, pp. 33, 43–46). As a result, his contractual freedom is severely limited and he does not express his free consent neither with respect to the content and terms of the contract nor with regard to his contractual partner.

In order to protect the weak consumer and correct the perceived imbalance in economic power, the legislator attempts by means of mandatory rules to adjust the environment within which the bargain is struck. These rules are introduced to redistribute the incidence of costs between the contracting parties and to restore equality within the market. The prescription of a cooling-off period is thought to promote the consumer's position vis-à-vis the supplier, by protecting him from the danger of being taken by surprise and entering contracts against

his will. This approach is evident in the EC Directives, as well as in the national regulations of the EC Member States.

A reason to be sceptical about the traditional weakness argument is that it provides no information about the cause of quality deterioration in product markets (Van den Bergh, 1996, p. 78). A well-grounded theory of consumer protection should be able to give solid explanations of the shortcomings observed in markets. The main reason for quality reduction follows from the fact that consumers enter contracts in an environment of incomplete information (Akerlof, 1970). Although the legislator does seem to be aware that there is an information problem, he regards it as a factor conductive to the consumer's inferior bargaining position rather than as a market inefficiency that must be cured. Hence, protective rules are designed for distributional reasons. This rationale overlooks the fact that consumer protection is not a zero-sum game. The issued regulations are expected to give the consumers what is taken away from the producers and traders, in order to equalise the formers' position. In reality, the consumers themselves may have to bear the costs of their "protection" through higher prices, and goals of redistribution may thus not be achieved.

Economic Analysis: Cooling-off Periods as a Remedy for Inefficiencies

Allocative efficiency is a fundamental concept in economics. Its attainment, namely the existence of a situation in which resources move to their most valued uses, is one of the main goals of economic policy. Consumer choice is a central issue of this economic notion of allocative efficiency (Ogus, 1994). In order for it to be obtained, at least two key assumptions must be satisfied. First, consumers must behave rationally by choosing courses of action in line with their preferences, and thus maximising their utility. Second, consumers must have all the necessary information concerning the alternatives among which they can choose and the effect that each option carries. It is not a novelty to say that these assumptions are not fulfilled in real world circumstances. When the interaction of market forces fails to generate efficiency, there is a *prima facie* case for the legislator to intervene in ways that reinforce the market or, better still, the contractual environment within which consumers act. From this perspective, the regulatory establishment of cooling-off periods has an economic

rationale: It can be seen as an attempt to cure the observed shortfalls. This contention will be examined further in the following paragraphs. Irrational behaviour, situational monopoly power, and asymmetric information not only explain cooling-off periods using an explicit economic logic; these insights also provide for a measure of their effectiveness in curing inefficiencies.

Irrational behaviour. Economic analysis starts from the presumption that individual economic actors act rationally. Choices are rational when they are made according to the consumer's stable-over-time preferences; these, in turn, are well defined, if the consumer takes into account all the means and alternatives available to him. Even though the rationality hypothesis has dominated economic analysis, it has turned out to be less strong than initially assumed (Arrow, 1982, pp. 1–2; Conlisk, 1996, pp. 669–672).

Consumers are often faced with intertemporal decisions, implying that costs and benefits are spread out over time (Loewenstein & Thaler, 1989, p. 181). In economic models, a person's intertemporal preferences are considered to be time consistent, meaning that a person will feel the same about a given intertemporal trade-off no matter when he is asked (Rabin, 1998, p. 38). However, consumers have demonstrated remarkable instability in their preference ordering during this kind of decision-making. Instead of being stable over time, preferences fluctuate depending on the situation in which the consumer must make decisions.

The purchase of timesharing provides a suitable example. During the relaxed and worry-free period of his vacation, a consumer may easily be persuaded to buy a timeshare apartment where he is spending his holidays. At that particular moment, this object is ranked first among his preferences. Returning to his day-to-day life, however, other urgent needs begin to take preference. If his choice is a binding and final one, he will be obliged to live with it and suffer the consequences. It is in this situation that the cooling-off period plays an important role; whether the effect is substantial or not, is a matter of further inquiry.

Concerning such effects, cooling-off periods could deal with the costs arising from a "regret contingency." Goetz and Scott (1980, 1998, p. 240) use this term to denote "the future occurrence of a condition that would motivate breach if these were a cost-free option for the promisor." In a sales transaction, buyer ad seller are both promisor

and promisee. In the case of a regret contingency one of the parties might wish to exit the contract on the basis of changes that occurred in the external environment rendering the transaction no longer profitable. Whereas in the foregoing reference was made only to the change of mind of the buyer, the change of preferences identified here is caused by the occurrence of an unexpected "external" event. Obviously, there are costs associated with a regret contingency, which Goetz and Scott identify as "the loss attributable to performance, causing costs to the promisor exceeding the expected benefits of performance, or alternatively, the costs of any sanction following potential breach, in which case also the costs arising from the 'uncompensated detrimental reliance' of the promisee should be considered" (1998, pp. 240–241).

For a cooling-off period to be of value in this case, it should be a general right granted to all parties in every kind of contract. It would help to avoid the above-mentioned costs by rendering lawful any potential breach on the side of the promisor in the event of a change in the contractual environment (occurring during the cooling-off period), and by deterring detrimental reliance on the part of the promisee (since the promisor's withdrawal is possible and should be expected). As a remedy, cooling-off periods differ from the application of the general rule of contract modification. Under the latter rule, if the facts that constitute the basic ground of the contract have changed, there is no time limit with respect to the power of the courts to modify or fail to enforce the contract terms.

Returning to the analysis of the cooling-off period as a right granted to consumers only, it must be noted that particular sales processes play an important role in undermining utility-maximising consumer behaviour. Although standard optimisation theory will have consumers to search and compare all possible options in order to pick the best (Conlisk, 1996, p. 675; Eskridge, 1984, p. 1112), when contacted by a salesman on their doorstep, consumers simply buy the product offered. Consumers could refuse to buy from doorstep salesmen, and shop around for better products or lower prices. However, they do not always do so for two reasons. The first is a reduced perception of risk, which is an aspect of the irrational decision-making discussed in this paragraph. The second reason pertains to market failure – the emergence of seller market power albeit temporary – and will be discussed in the following paragraph.

High pressure marketing tactics used by some sellers may cause

a reduction in the risk perceived by consumers. The so-called unfair persuasion (Eisenberg, 1982, 1998, pp. 312–313) used by particular sellers, renders a consumer who is normally capable of exercising correct judgement temporarily unable to do so. While the salesperson is engaged in a flow of persuasive talk in the person's own house, the consumer is pushed out of a deliberative frame of mind (Eisenberg, 1982, 1998, p. 312). His perception of risk diminishes. Decisions normally cause stress for the decision-maker, because of the risk that they enclose. Some recognition of risk is necessary for the correct decisions to be made (Eskridge, 1984, p. 1114–1115). When stress is reduced or eliminated, the consumer will come to a decision without spending much effort (or any at all) on contemplating the risk or looking for potentially better alternatives. There is a strong chance that, in the end, the consumer will not be content with his choices. Discontentment may be stronger because of the consequences of the decision, such as lack of money to finance other definitely more important actions or purchases, which indeed – and contrary to the choice just made - maximise the consumer's utility. Risk perception returns to normal levels (for rational decision-making) when consumers are no longer exposed to the aggressive sales techniques; their utility function then again takes the shape it has in the absence of these particular marketing methods. To cure this problem of irrational behaviour, a cooling-off period may prove useful if it lasts long enough for this adjustment to occur.

It could be argued that the provision of a cooling-off period is needless, since it can be expected that mistakes connected with irrational consumer choices lead to learning processes and make the consumer more cautious of particular marketing methods. According to the saying: "No wise man makes the same mistake twice," the consumer might promise himself to behave differently next time. However, "next time" is chronically deferred. As already mentioned above, behaviour is inconsistent over time. This problem lies at the heart of consumer sovereignty or – to be more accurate – the lack of it. Undoubtedly, people learn from their mistakes but that does not necessarily mean that they do not repeat them. Short-term tendencies to pursue immediate gratification are inconsistent with long-term preferences. When considering trade-offs between two future moments, individuals give more weight to the earlier moment as it gets closer (Loewenstein & Thaler, 1989, pp. 185–186; Rabin, 1998, pp. 38–39). Since preferences evolve over time, decisions may

turn out to be irrational and contracts concluded will not be perfect. The provision of a cooling-off period can be justified on the ground that it enables the consumer to reconsider his short-term choices and give way to his long-term preferences.

Situational monopolies. The problem of "consumer weakness" mentioned in the introduction, may in the language of economics be rephrased as the existence of market failures. The emergence of temporary market power on the side of the seller due to the particular circumstances created by the vending techniques employed is such a market failure. As Trebilcock (1993, p. 101) puts it: "Situational monopolies arise out of particular circumstances surrounding particular exchanges, where this transaction-specific market power is exploited opportunistically to extract *quid pro quos* . . . , which, while socially positive, cannot in the normal competitive environment surrounding the type of transaction in question justify anything like the commitment extracted for them."

The question then arises: How does the supplier marketing his products by door-to-door or distance selling achieve his monopoly power? Do consumers not have alternative sources of supply? Seeing them as placed in a sort of "lock-in" position in such cases, does not mean to say that there is no alternative provider of the goods offered to them. Instead, it is emphasised that the conclusion of the transaction may be the result of consumers having been convinced that it will be far more costly for them to seek out alternative suppliers. For example, unknown products may be advertised on television, claiming to perform unusual functions and to be unavailable in normal retail outlets. Alternatively, doorstep salesmen may persuade consumers that the goods they offer are "unique," pioneering, and/or non-obtainable through regular commercial premises. Thus, the consumer may be so convinced that he purchases a product, only a couple of days later to find the same product in a conventional store offered at a significantly lower price. Even if certain products are indeed unique, the particular vending techniques used (for example, "buy now and you will receive a valuable gift"; "the first one hundred callers will receive two products for the price of one"), may entice consumers into concluding a contract at a price higher than the product's value.

Eisenberg (1982, 1998, p. 314) reports that there have been cases of door-to-door sales at a price more than twice as high as that charged

for comparable commodities in conventional retail stores. In the event that consumers cannot be seen to benefit from such marketing techniques (e.g., providing a service for those unwilling or unable to shop for themselves) or that higher prices are not caused by the extra costs the seller has to incur for marketing his goods on a doorstep basis, then such high prices cannot be easily justified. They can more easily be seen as a monopoly rent, earned by the supplier due to the particular selling procedures he employs.

Informational asymmetries. Allocative efficiency is achieved only if decision-makers conclude a transaction in a contractual environment, in which full information about the existence of available alternatives, their contents, and the consequences of the transaction is available. In real-life contracts concluded between traders and consumers, the theoretical assumption of full information is not satisfied and, as a result, allocative efficiency cannot be obtained. Full information can be achieved only in an extremely theoretical case. Nevertheless, this requirement provides us with the necessary criteria which efficiency-oriented regulatory techniques should aim at attaining.

Significant informational deficits on the side of the consumers are likely to occur when the sales offer concerns goods or services, whose dimensions of quality posses "experience good" (Nelson, 1970) or "credence good" characteristics. The former term is used to denote dimensions of quality that can be evaluated only after purchase, at the time of use or consumption. The latter term involves cases in which the effects of use or consumption are known only years after the goods have been purchased (if ever), or can be assessed only with the help of highly technical standards.

In these cases, the inability of consumers to discern the quality attributes of the product or service creates a danger of adverse selection that may *in extremis* result in the collapse of the market (Akerlof, 1970). If experience goods (in contrast to "search goods," whose quality can be ascertained on inspection prior to purchase) are sold, asymmetric information prevents consumers from differentiating between good and bad quality products. The market price reflects only the lower quality; thus high quality producers must reduce production costs – and hence the level of quality of the goods offered – in order to stay in the market. In this way the high quality products are progressively replaced – "wiped out" – by the bad quality ones.

One can easily discern the problem of asymmetric information in

distance selling transactions, where the consumer and the trader are physically separated. Such purchases involve ordering by mail, phone, through television advertising, or, more recently, through the Internet. By the very nature of the transaction, the consumer is inadequately informed. Even where search goods are concerned, prior to purchase inspection of the commodity attributes is impossible, due to the particular conditions under which the transaction takes place. The consumer is not given the opportunity to check the product personally, in order to assess if he gets value for money. When he finally receives the purchased item, he might realise that the product's search quality is lower than expected, taking the purchase price into account. This may lead the consumer to distrust such purchasing methods, which in turn could cause them to vanish. The fact that such markets not only continue to exist, but are rapidly expanding (e.g., e-commerce), shows the existence of market mechanisms that mitigate the information problem: "reputation" is the market's own device. Internet transactions are growing, in part due to the use of reputational mechanisms. When consumers are not able to observe product quality directly, they prefer to purchase from sellers who have the reputation for goods or services of high quality (Kay & Vickers, 1990).

In order to build and maintain trust, businesses may act both at the individual and at the collective choice level (Furubotn & Richer, 1998, p. 122). At the former level, three strategies are available. Firstly, in repeated transactions it will be in the interest of the seller to maintain quality when consumers have accumulated trust in a firm's product or in a particular brand name (Kay & Kickers, 1990; Ogus, 1994). Secondly, sellers may engage in excessive advertising expenditures. This is a sort of bonding mechanism that will entail big losses if quality is low. Thirdly, sellers may provide warranties, which fulfil both a signalling and an incentive function (Emons, 1989). A better quality product is expected to incur lower warranty costs. Hence, a seller can signal high quality by an extensive warranty coverage. Warranties also function as an incentive for firms not to cheat on quality: if they do, the probability of product failure is increased and so are the warranty costs. The recent EC Directive on Consumer Guarantees (99/44/EC) stresses the legally binding nature of this right, which is accorded to the consumer on a contract basis (Art. 6).

At the collective choice level, businesses tend to participate in labelling schemes and/or trade associations. Examples include the Kitemark symbol of the British Standards Institution (Ogus, 1994,

p. 137) and the "hallmark" of the TrustUK, which indicates that the "electronic" businesses displaying it subscribe to a code of practice (http://www.trustuk.org.uk).

Likewise, the granting of a cooling-off period works as an incentive for sellers to set product prices that correspond to the products' actual quality; or, to put it differently, not to set prices in excess of the full-information value of their products. Cooling-off periods constitute a natural inducement for sellers to disclose, through the price mechanism, information about the quality of the offered products or services (Stuart, 1977, p. 163; Van den Bergh, 1996, p. 87). For example, the consumer who realises that the quality of a purchased good does not correspond to its price will make use of his right to return it. The use of this withdrawal right can have the cumulative effect of diminishing the particular business' total sales. To avoid this loss, the price of the products offered will reflect their real quality. In other words, differences in the relative quality of products will be successfully signalled to the consumers through the price mechanism. In this way, incentives for improving the quality offered are given to producers and the problem of adverse selection and quality deterioration is eliminated. The economic rationale of cooling-off periods, i.e., their ability to deal with market failures, gets further support from their voluntary acceptance in the context of self-regulation. The legislator copied a rule, which initially emerged within the self-regulatory framework of trade associations, such as mail order business associations (Consumer Affairs and Competition Policy Directorate, 1998; West, 1995).

Disadvantages of Cooling-Off Periods

The economic analysis of cooling-off periods would be incomplete if the substantial costs that they may create, as well as their potential adverse effects, were not taken into consideration. If consumers can easily withdraw from concluded contracts, they may be tempted to abuse this right. Opportunistic behaviour may arise when consumers can use the product during the cooling-off period and return it afterwards to the seller claiming bad quality. In addition, cooling-off periods increase the costs of carrying out transactions. Contracts are in effect completed only after the expiration of the cooling-off period, which causes delay and uncertainly. If the latter transaction costs exceed the benefits achieved by curing the economic distortions in

consumer markets, cooling-off periods may, on balance, be welfare reducing. As shown below, in particular circumstances cooling-off periods may harm rather than benefit consumers.

Moral hazard on the part of consumers. At first sight, if cooling-off periods appear able to successfully cure the asymmetric information problem, there seems to be no reason for limiting their application to certain product and services markets. Why not generalise their use to relieve inefficiency in all areas where informational asymmetry is its cause? However, if that were done, a serious problem of moral hazard on the side of the consumer would inevitably arise. For instance, in the case of cars – where a cooling-off period should have a considerably extended duration in order to fulfil its informative role (given the several "experience good" dimensions of the car) – the consumer might use the car during the cooling-off period and then return it to the seller claiming non-satisfaction. A solution to this problem of opportunistic behaviour could be the requirement of a sort of rental payment from the consumer (Stuart, 1977, p. 163). This would mean that during the cooling-off period he will have to pay an amount of money proportionate to the time he possessed and used the car, as well as the costs incurred by the seller from that use. In such a case, the consumer will be deterred from behaving opportunistically, since he will know that such behaviour will not be without cost. The moral hazard problem could, therefore, in principle be tackled.

A rental payment may not, though, be a perfect remedy. Suppose the consumer makes secret use (i.e., regular use, and not just use in order to check its attributes) of a good for some period. For example, he buys a video camera in order to use it for a special occasion, such as a birthday, graduation, or a weekend excursion, and then returns it and gets his full refund. A rental payment may not cover all costs arising from the product's use. When the camera is resold, it is no longer brand new; it has definitely undergone some kind of wear, and the likelihood of a functional failure has increased. This may result in the "activation" of the warranty within the time period for which it is given. To further illustrate the problem, the manufacturer might consider a six-month warranty as commercially profitable. If the cooling-off period has a one-month duration and the product is returned at the end of that period, the warranty will in effect (i.e., for the manufacturer's cost calculations) be prolonged by one month

if the good is resold. The manufacturer may then be confronted with costs that he had not anticipated when determining the conditions and duration of the warranty.

Uncertainty and delay. In an economic analysis of cooling-off periods, the question of whether the costs of their regulatory provisions outweigh their benefits is fundamental. It is important to note that the provision of a cooling-off period as an information remedy provides the consumer with the possibility to check the quality of the product he bought and to compare it with rival products; in this respect it enhances consumer choice. However, compliance with the legally imposed duty to provide all buyers in certain transactions with a cooling-off period may prove quite costly for the sellers. It may also be reasonably assumed that a part of those costs are passed on to consumers.

Cooling-off periods inevitably cause two negative effects: uncertainty and delay. The seller might ask a higher price, proportional to the value of the product, when the transaction is finally completed, in order to be compensated for the costs of transactions that were called off. But even if all agreements are finalised after the expiration of the cooling-off period, the payment still comes at a later point in time. The deferred payment's value is always less than the immediate payment's value. Hence, the seller may impose a price increase incorporating an interest for the delayed receipt of payment. This is one more demonstration of the fact that consumer protection is not a zero-sum game. Mandatory disclosure of information could in this respect be a better instrument; while it also preserves and enhances consumer choice, it does not entail costs like the ones just mentioned. Additionally, where the necessary information cannot be "communicated in an easily assimilable way," or where there are high risks involved, quality regulation could be a better information remedy (Ogus, 1994, pp. 121–122).

Adverse effects. As indicated above, the cost and risks arising from a mandatory cooling-off period may be substantial. The compulsory provision of this contract term does not only hurt the consumer indirectly, by raising the prices of the products or services for whose purchase a right to rescind is granted, but cooling-off periods may also cause direct harm because they give rise to counter-productive effects. In their study on banking services in the U.S.A., Barefoot and others

(1993, p. 26) suggest that in some cases, the regulation designed to help consumers may actually harm them. As their study shows, the spectrum of products that banks were offering was gradually shrinking due to high compliance costs and risks. Especially where the provision of cooling-off periods was concerned, severe sanctions were imposed on banks even for innocent errors. "If, for instance, a bank calculated the three day right of withdrawal incorrectly, the customer was entitled by law to an extended right – even up to three years – to rescind the loan" (Barefoot et al., 1993, p. 40). Concerned about such high risks, banks decided to leave the loan market. With fewer suppliers competing on loan prices, it is inevitable for the prices to rise, and for the consumers to be worse off (also because of the reduced spectrum of choice).

If suppliers cannot waive the right to rescind, they may decide to wait for the cooling-off period to expire before supplying the products. American research demonstrated that banks became reluctant to provide consumers with the loan capital before the expiry of the cooling-off period, in order to avoid possible direct losses. This indicates that the compulsory character of cooling-off periods may not be always justified. Indeed, in the case of credit transactions where mandatory information disclosure has assumed particular importance in recent years (Ogus, 1994, p. 128), there may be no reason for a cooling-off period. If the potential borrower came in direct contact with the bank and the latter fulfilled all legally imposed duties to provide the borrower with information about the contemplated loan transaction, a delayed fulfilment of the contract (after the expiration of the cooling-off period) constitutes no consumer gain. The argument that the consumer should think over this decision before committing himself financially implies paternalistic concerns. Paternalism may lead to actually harmful effects: if the consumer urgently needs money but cannot receive funds immediately, he is definitely harmed by the postponement of the completion of the transaction. This effect is further exacerbated when the law explicitly forbids the supplier to perform the contract before the cooling-off period has expired.

ECONOMIC ASSESSMENT OF COOLING-OFF PERIODS IN THE EC DIRECTIVES AND THE CONSUMER LAWS OF THE FIFTEEN MEMBER STATES

An Adequate Remedy for Asymmetric Information?

The time period within which the consumer is entitled to invoke his right to withdraw from the transaction, ranges from seven to thirty day.[1] In cases of doorstep[2] or distance sales, this time period usually starts upon receipt of the goods. In the case of contracts for the provision of services, the cooling-off period starts upon the contract's conclusion. Specific rules exist with respect to timesharing contracts and credit transactions. The main reason for the difference in length is the nature of the transaction. The question naturally arises whether the length of the cooling-off periods is optimal. On the one hand, a cooling-off period should allow the consumer sufficient time to gather and process all relevant information concerning his purchase. On the other hand, periods that are too long may cause transaction costs in excess of the benefits achieved by curing the problem of asymmetric information.

The particular contents of the transaction will determine the optimal duration of the cooling-off period. A distinction is to be made between distance selling, where seller and buyer are not in physical contact with each other, and doorstep selling or contracts concluded on regular sales premises. When the commodities purchased at a distance are search goods, a seven-day cooling-off period appears rather long. The purchase of an encyclopaedia may serve as an example. Whether it provides the kind of information the consumer expects to find or not, is something that can be determined upon receipt of the first volume; the quality of such products can easily be ascertained, also within a shorter time frame than seven days after receipt. As far as experience qualities are concerned, greater scepticism regarding the effectiveness of a seven-day cooling-off period to cure information asymmetries seems justified. For example, it is questionable whether someone who purchased non-corroding Japanese kitchen knives can check within a seven-day period if this claimed attribute is true. In such cases, comparing the duration of the commercial warranties granted by different sellers may prove a more effective remedy for the informational asymmetry problem.

In cases of doorstep selling, the same question arises, i.e., whether

the seven-day period for the consumer to reconsider his decision is adequate. The relevant uncertainties in this case concern experience qualities of the goods purchased. Obviously, a cooling-off period in contracts concerning doorstep selling of commodities that have search qualities is inexpedient. Consumers do not benefit at all from such a rule, while costs are incurred from the delay of the transaction. However, in the latter case, cooling-off periods might bring about different benefits resulting from the cure of temporary irrationality.

As already mentioned, the picture is different with respect to experience qualities of the goods sold. Even though the product can be examined before its purchase, such an inspection will not always suffice for experience quality dimensions of the good to become known. The conclusion about the effectiveness of the cooling-off periods in that respect is not absolute, however. It depends to a great extent on the particular experience dimensions of the commodity, as well as on the good itself, whether the partial consumption or use of the product during the cooling-off period suffices in order for its real characteristics to be revealed. For example, the consumer who purchased a vacuum cleaner from a doorstep seller can easily find out whether it functions exactly as he was told within seven days after its purchase. However, he might not be able to infer any information concerning the product's durability within such a short time span. A similar reasoning applies to correspondence courses. According to Dutch law, courses with a length of more than six months may be cancelled within the first three months of the course;[3] such a longer period is in conformity with economic insights.

Of particular interest is the Italian Doorstep Act 50/1992.[4] The seven day cooling-off period for goods purchased door-to-door starts on receipt of the goods, unless demonstration of the purchased goods has taken place previously.[5] In the latter case, the cooling-off period starts on the day of the demonstration. This implies that the consumer is not necessarily in possession of the goods during the cooling-off period. How can this rule be assessed? Referring to changes in risk perception and instability of preferences, one could consider the rule to be adequate. As far as the effectiveness in curing informational asymmetries is concerned, the demonstration of the product may allow the consumer to gather information about search qualities. By contrast, experience dimensions of the good can hardly be assessed if the consumer is not in possession of it. This is also true with respect to attributes of the good which are satisfactory when the product is

demonstrated, but may turn out to be defective when the product is delivered to the consumer. It is well-known that a certain percentage of products, such as electrical appliances, have some kind of defect (Deligiannis & Kornilakis, 1992, p. 340). Of course, the two-year legal guarantee (Art. 5 Directive 1999/44) as well as the potential existence of a commercial guarantee, may cope with this problem. One could then wonder what makes the co-existence of both instruments (consumer guarantee and cooling-off period) necessary. The answer seems to be that the overlap of their scope is only partial. While the consumer guarantee may be activated only if some kind of defect is found, a better-designed cooling-off period, allowing possession of the goods during the period, enhances consumer choice. Consumers' preferences are not homogeneous and price-quality evaluations are subjective; a cooling-off period allows a consumer to rescind the contract without giving any kind of justification and thus improves consumer choice.

The cooling-off periods are clearly too short for timesharing. Neither the ten-calendar-day period established by the relevant EC Directive as a reconsidering period, nor the fourteen days mandated by some Member States seem sufficient. If the contract, which involves the purchase of the use of a property in a holiday resort for a specified period of the year, is concluded at the consumer's place of residence (for example through a travel agency), then, definitely, a ten- or even fourteen-day cooling-off period does not allow for a personal inspection of the particular property. The holiday resort will often be located in a foreign country in which case it is unlikely that the consumer will incur the costs of travelling there immediately after purchase, just to see where he will reside when holiday time comes. Furthermore, even if the property is located in the country where the consumer resides at the time at the purchase so that direct inspection of the property is possible, he is still likely to lack important information relevant to the purchase which he will be unable to obtain, either within a ten- or fourteen-day period. Since the consumer has bought future use of a property, he cannot really know the actual quality of his purchase before he has used the property for a sufficiently long period. For example, repairs may soon be needed, the property may be stricken by strong winds or excessive dust, the sound insulation may be bad, the roof may leak when it is raining, and so on. It appears that in the case of timesharing, a cooling-off period to cure information asymmetries does not have a solid economic

ground, unless it covers a considerably longer period allowing the consumer to spend a couple of holidays (or, at least one) in the relevant resort. Obviously, a cooling-off period lasting for at least one year would create a serious risk of moral hazard. That is why, when the timesharing contract is revoked, the consumer should be asked for a rental payment, covering the use of the property as well as the costs incurred by the other party.

In cases of insurance contracts, consumer laws of some EC member states provide for a cooling-off period of thirty days.[6] It might be doubted that this is an adequate remedy for all problems of asymmetric information. Insurance policies contain complex provisions. Only specialised lawyers can explain the precise meaning of clauses affecting the value of the policy. Even if the consumer is able to get this specialised information within a month, he must still process it and apply it to his particular situation. Insurance is typically bought to reduce the risk of uncertain future losses. It is unlikely that cooling-off periods will suffice to assess the value of the insurance policy in the case of an event which one hopes will never happen. However, cooling-off periods may cure a part of the informational asymmetry concerning terms of payment in different insurance contracts. In general, one could conclude that other regulatory approaches, such as a prohibition of unfair clauses, might be a more adequate remedy for problems of asymmetric information (on the side of the consumer) in insurance markets. Given the limits of cooling-off periods, further reaching regulatory intervention, such as quality regulation prohibiting the use of harsh terms, may be needed to cure the relevant inefficiencies.

A particular problem arises when the consumer has not received essential information on the nature of the transaction and its subject (including the cooling-off period), as required by the applicable consumer laws. A comparative analysis of the legislative provisions in the EU Member States reveals that there are different ways of coping with this problem. One possibility is the extension the period, within which the withdrawal right may be exercised.[7] At first sight this seems an adequate remedy. One *caveat* should be made, however. Too long periods may cause delays and potentially even adverse effects that outweigh the benefits achieved through curing information asymmetries. In this respect the up-to-one-year extension of the German law on consumer credit[8] may prove quite inconvenient for the

credit supplier with adverse effects on the consumer, as the U.S. experience already has shown (Barefoot et al., 1993, p. 40). The extension to three months with respect to the timeshare cooling-off period, by either the national[9] or the community legislator,[10] does not seem adequate. As we mentioned above, the cooling-off period should be considerably longer in order to function as a remedy for informational asymmetry in timeshare transactions.

Other laws do not include any extension provisions. The Belgian, Irish, Greek, Swedish, and U.K. laws stipulate relative nullity if no information on the existence of a cooling-off period is provided by the written contract in cases of doorstep sales.[11] Similarly, Greek law provides for the sanction of nullity if information is not provided either by means of distance communication[12] or by the final written contract.[13] Nullity in favour of the consumer has the same effects as cancelling of the contract during the cooling-off period. However, the Greek provision does not set any time limit within which the consumer can invoke nullity, meaning that his ability to do so exists, theoretically, in perpetuity. Of course, in practice the general principle of abuse of rights may be invoked, if nullity of the contract is pleaded after a considerably long time. Nevertheless, the problem remains that the costs of uncertainty and the increased risk are definitely greater than the costs arising from an extension of the cooling-off period. In this respect the Swedish Door-to-Door-Sales Act contains a better designed provision: While considering the contract void if no information is provided, it stipulates that "if the consumer wishes the contract to be annulled . . . the trader must be notified to the effect within one year from the date on which either the goods where delivered or the provision of the services started."

A result similar to the one arising in cases of nullity provisions without explicit time limits may occur as a consequence of a particularity of the Dutch cooling-off provision for doorstep contracts. In the Netherlands, the period starts on the day when a copy of the contract is registered with the Chamber of Commerce. Again, this means that, in theory, the cooling-off period is endless if none of the parties carries out this formality. It is reasonable to assume that the seller will fulfil this obligation, given that he is more likely to be informed about its existence. In addition, it is understood that the nullity provision aims at inducing the seller to inform the consumer about his right to withdraw. However, the extra costs caused by the

obligation to provide the information on the cooling-off period twice, or to have every concluded contract dated by an agency, do not seem to bring about additional benefits that justify the additional costs.

It is important to note that both the national and the community legislator seems to disregard the fact that the granting of a withdrawal right makes it simultaneously possible to reduce the great number of information provision requirements imposed on sellers and traders (Van den Bergh, 1996, p. 87). When the consumer himself, as the cheapest information cost provider, can obtain all relevant information during the cooling-off period, there is no need for the seller to provide it also, let alone to provide it twice, as most regulations on distance sales require. Hence, all the provisions of a cooling-off period which are combined with extra information duties on the supplier, may only increase the costs of the transaction without having an additional advantageous effect on the benefits gained. This criticism applies both to the EC rules on distance selling (that require that information is given to the consumer twice: not only prior to the conclusion of the contract but also after the latter has been signed[14]) and to a number of national legal provisions.[15] However, in some circumstances, requirements of information disclosure on advance of agreement may be efficient if unraveling the transaction after the facts would involve significant costs.

An Adequate Remedy for Other Inefficiencies?

It will now be examined whether the current consumer laws provide an adequate remedy for the problem of irrational behaviour. A seven- or ten-day cooling-off period in cases of doorstep selling could be sufficient for the consumer to recover the normal level of risk perception. The provision of a cooling-off period with an even longer duration might be expedient with respect to house loans. Although it would not serve as an information remedy in the latter case – provided that the direct contract between the potential buyer and the financial institution has removed any informational deficits on the side of the former – it could cure irrationality. While the risk perception of the buyer may be very high when making his decision to purchase a house, it may diminish when it comes to completing the deal and settling the payment with a loan. The choice of the home may have

consumed whatever cognitive energy the consumer had; all he wants when talking to the bank is to get it over and done with (Eskridge, 1984, p. 1116). In such a case he might reach irrational decisions with respect to the loan, and the regulatory right to withdraw from the concluded credit contract may cope with this imperfection.

The British and Irish consumer laws, which explicitly exclude house loans from the cooling-off regulations[16] are, thus, not in line with the economic rationale of curing irrational behaviour. In contrast, the French Consumer Protection Code, which specifically provides the consumer with a ten day period,[17] within which he is not allowed to accept the offer and conclude the home loan agreement (deliberation period), may be considered an adequate remedy for irrationality. An additional provision permitting a waiver or shortening of this period would probably bring this stipulation close to optimality (as shown above, in the discussion on the adverse effects of cooling-off periods in credit transactions).

As far as timesharing is concerned, the ten- or fourteen-day period is not necessarily sufficient for the consumer to exit the status of "temporary madness." If he signed the timeshare contract at the end of his vacation and returned to his every day environment before the cooling-off period expired, the irrational decision may be revoked. In the opposite situation, the current duration of the cooling-off period provided by the national regulations and the relevant EC Directive will not be able to cure irrational behaviour. Taking into account also the ineffectiveness of the cooling-off periods to cure problems of asymmetric information, it may generally be recommended that timeshare contracts provide for a cooling-off period with a longer duration and payment of compensation by the consumers when they exercise their withdrawal right.

Cooling-off periods may also be a remedy for the abuse of situational market power by traders. If consumers buy products on the doorstep or via mail, television, or the Internet, they will not be able to make informed price-quality comparisons. The particular marketing techniques used by the sellers enable them to charge prices exceeding the utility to the buyers. As is the case with ordinary monopolies, prices charged by the situational monopolist will cause welfare losses. Cooling-off periods of a week, as they are provided for the EC distance sales, seem to be an adequate response to the problem of situational monopolies. During the cooling-off period, consumers will be able

to search for substitutes and make the relevant price-quality comparisons. This may enable them to withdraw from contracts requiring them to pay monopoly prices which are substantially higher than the prices charged in regular retail outlets.

Some additional remarks seem appropriate. The effectiveness of the legislation providing for cooling-off periods is also dependent on the provision of access to justice for individual consumers. If, in cases of non-respect of regulatory provisions by traders, the costs of taking legal action are disproportionately high relative to personal losses, consumers may be reluctant to make full use of their rights. Withdrawal rights may turn out to be ineffective if the regulations allow receipt of payment during the cooling-off period[18] and at the same time do not provide consumers with the right to have a lien on the goods they hold until the seller has repaid the received money in full.[19] For example, if a consumer sends back the product he purchased through a TV advertisement and the tele-shopping company does not reimburse the money to him within the prescribed period of thirty days (as required *inter alia* by the relevant EC Directive[20]), he may decide not to initiate legal proceedings in order to recover a small amount of money. Some national rules exacerbate this effect by not granting legal assistance if the amount of the losses suffered is low (Stutterheim, 1992, pp. 54–355).

Access to justice may be particularly problematic where cross-border transactions are concerned. Given the establishment of the European internal market, consumer problems will often transcend national borders. Problems of decision enforcement may be particularly severe in a transboundary context. In the case of a decision handed down in favour of a French citizen in a dispute with the manager of a mail-order company based in Germany, the difficulties encountered in the enforcement of the decision were of a size such that even the most persistent consumer would have been discouraged. It eventually took over two years to obtain enforcement of the decision (Chambraud, Foucher, & Morin, 1994, p. 134).

Co-operation between dispute settlement organisations, such as the agreement between the Portuguese Centre for Arbitration of Consumer Conflicts and the Madrid Arbitration Centre (Junta Arbitral de Madrid), may help in facilitating the enforcement of decisions having a cross-border character. The agency located at the place where the contract was concluded will handle any complaint made at either

Centre. The consumer is not required to be present before the arbiter and it suffices that he is represented by a member of a consumer association (Cabecadas Mendes, 1994).

However, even favourable and successfully enforced judgements still entail the possibility that some businesses will continue their objectionable behaviour, because it may be more profitable to pay damages than to change the marketing methods. In this respect more effective enforcement may be obtained through voluntary supervision by the self-regulatory bodies of trade associations, which is a solution not disregarded by the European Commission (Art. 11 Directive 97/7). The European Consumer Complaint Form should also be mentioned here. It is a new instrument aimed at improving communication between consumers and professionals and at resolving their disputes out of court (Commission Communication of March 30, 1998, SEC (1998) 576 final).

It is clear from the above analysis that the main economic goal of cooling-off periods is to give traders an incentive to provide information about the quality of the goods and services offered through the price mechanism. In this respect, cooling-off periods will be ineffective when the cancellation right is exercised only occasionally. The well-known distinction between marginal and infra-marginal consumers can clarify this limitation (Trebilcock & Dewees, 1981). The marginal consumer will exercise his right once he realises that he can conclude a similar contract acquiring products or services of higher quality. In contrast, the infra-marginal consumer will accept what he is given and will not bother to use his withdrawal right, even if he is provided with numerous written notifications and pre-printed forms, as most of the regulations analysed in this paper[21] require. If the number of the infra-marginal consumers is higher than the number of the marginal consumers, the trader may not be incited by the mandatory provision of the cooling-off period to provide higher quality. It may be more profitable for him to receive some products back, to repay the marginal purchasers, and to continue to offer low quality to the rest of this business, which anyway constitutes the majority of his customers.

Are Disadvantages Minimised?

Some of the current regulations do not seem to pay sufficient attention to the problem of moral hazard on the part of the consumers, created by the provision of cooling-off periods. The Belgian Law on Consumer Credit[22] and the Belgian Trade Practices Act[23] explicitly prevent the traders from asking for compensation from the consumers who used their withdrawal rights and thus increase, rather than decrease, the risk of moral hazard. On the contrary, the German Law on Doorstep Sales[24] allows for compensation for the goods and services used during the cooling-off period. In the same spirit, the Italian Doorstep Sales Act deducts from the amount that is to be returned to the withdrawing consumer additional payments done by the latter in order to individualise the object of this purchase (if explicitly agreed upon before conclusion of the contract). Similarly, the Spanish Law 28/1998[25] allows for the seller to be compensated for the potential commercial depreciation of the good, provided this is agreed upon conclusion of the contract. The latter rule may also remedy the ineffectiveness of rental payments to cure moral hazard in the case where the product is returned when it is no longer brand new, thus activating the warranty earlier than assessed by the manufacturer. Finally, the Luxembourg Consumer Credit Act[26] allows a penalty not exceeding 3% of the cash price. As long as such a penalty imposed on the consumer deciding to withdraw from the credit agreement can be justified as a counterpart to the costs incurred by the creditor, it may be considered an efficient provision.

It could be argued that "rental payments" might be needless because the general rules on unjust enrichment may be invoked instead. In this respect, two additional considerations are relevant. The required compensation aims at influencing the consumer's incentives, so that the "moral hazard" problem is coped with. If it is not explicitly prescribed in the law and included only in the information the consumer receives upon signing the contract, the deterrent effect may not come about. In addition, it may be expected that omission of a specific stipulation will entail a rise in the total number of cases brought before the courts and thus increase the amount of resources devoted to dispute resolution (Ehrlich & Posner, 1974). Since the legal "weaker party protection" principle strongly dominates, judges might not allow a seller who has received payment to keep any of it when the contract

is revoked, even if he (although in possession of the payment) has had no financial gain because of expenses incurred. For these reasons, explicitly stipulated rental payments may be a more effective remedy for the moral hazard problem.

Unfortunately, the German Timesharing Act[27] does not allow for any kind of compensation for services provided or for the use of the residence. It only entitles the seller to ask the consumer to bear the costs of notary services if so is stipulated in the contract. The Spanish Timesharing Act 1998[28] may also be criticised: If any sum is paid to the seller before the cooling-off period has expired, the consumer has the right to claim a sum equal to twice as much as he paid. The seller of timesharing is usually an intermediary between the real property owner and the final consumer and will thus incur considerable communication costs. In addition, certain legal formalities will have to be completed before the end of the cooling-off period. Hence, Spanish law compels the seller to bear costs for which he is not reimbursed if the consumer withdraws.[29]

High compliance costs may incite traders to restrict supply or even withdraw from the market. Cooling-off periods should not be granted to consumers if transaction costs increase to such an extent as to outweigh any benefits resulting from curing informational asymmetries and avoiding irrational purchases. To avoid adverse effects resulting from the withdrawal of products, legislators should allow traders to restrict consumers' withdrawal rights if information problems may be cured prior to concluding contracts and no aggressive marketing tactics are used. The exclusion of contracts involving the purchase of food and other non-durable commodities from the scope of some national consumer laws on doorstep sales (sales outside regular business premises)[30] may, thus, be easily supported by economic arguments. Since these kinds of goods may not be preserved for long, a cooling-off period would impede traders from providing such goods outside their business premises. This could result in an inability to supply the needs of particularly the less mobile consumers. In addition, the requirement that these goods be "supplied by regular roundsmen" indicates the legislator's understanding of reputation as a mechanism able to restrict opportunistic behaviour in the case of repeated transactions.

In contrast with these rules, other legal provisions illustrate a lack of economic understanding. Examples are the French, Belgian, Irish,

Greek, and Spanish laws requiring that the seller receive no money until the cooling-off period has expired.[31] This provision causes increased transaction costs for the traders and may induce them to restrict product availability. Conversely, the relevant provisions of some other member states' laws,[32] from which one can deduce that payment is allowed within the cooling-off period, prevent such adverse effects.

Cooling-off periods in consumer credit transactions may reduce credit availability. The French legislator has explicitly excluded payments until seven full days have expired.[33] The Belgian law obliges consumers to reimburse the money received and excludes compensation to the benefit of the creditor.[34] This will make the latter reluctant to make the money available during the cooling-off period, thus preventing the consumer from receiving it immediately in case of urgent need. It must be added that the French law reduces the risk of adverse effects by enabling the consumer to agree to a shorter cooling-off period of three days.[35] The Irish law[36] copes better with the said risk by allowing a waiver of the cooling-off period. The amended European Commission Proposal allowing the financial service provider to perform the contract within the cooling-off period, if the consumer explicitly agrees to it, may also be considered well designed in this respect.

Similar adverse effects may arise in the case of delivery of services when consumers are entitled to exercise the right of withdrawal. The Belgian and French laws do not allow delivery of services during the cooling-off period.[37] Similarly, the Greek law prescribing that the cooling-off period in distance service contracts starts on receipt of the documents informing the consumer of the conclusion of the agreement and not allowing a waiver of the right,[38] may result in perverse effects. The service provider may decide not to offer his services until the cooling-off period expires so that the consumer will obtain the services needed only ten days later. In a better designed provision, the EC Directive on distance contracts allows consumers to exercise their right of withdrawal within the cooling-off period even if performance has begun, if this has been agreed between the seller and the particular buyer.[39] This provision, on the one hand, eliminates the compulsory character of the cooling-off period and, on the other hand, allows the parties to decide whether a cooling-off period is expedient for both under the specific circumstances. For example,

a consumer who is greatly concerned abut the quality of the received service may agree to pay a higher price for it; similarly, the service provider may charge a higher price to incorporate the risk of contract cancellation although the service has been offered. The seller may also evaluate his potential loss in view of the quality of the service and the probability of the client's satisfaction. He may agree to a cooling-off period by asking for a higher price representing his cost evaluation while asking a lower price from consumers who are less concerned about the quality of the service. The directive enables this kind of evaluation on the part of both the consumer and the service provider, and induces bargaining between them. One obstacle remains, however. The Directive does not require that the seller informs the consumer about his withdrawal right (see Art. 4, 1,f). To guarantee efficient agreements, the consumer should be aware of his right to cancel the contract.

CONCLUSIONS

The central question asked in the introduction to this paper may be answered positively: Cooling-off periods are potential remedies for the problems of irrational behaviour, situational monopoly, and informational asymmetry.

Although the current rules in the fifteen EC Member States providing for a cooling-off period can be seen as responses to these problems, they fail to cure the said inefficiencies in all situations, however. These shortcomings may be attributed to the fact that the rule-makers wanted to correct a problem of unequal bargaining power, yet neglected the relevant economic insights. If the Community legislator as well as the national legislators had taken into account the economic function of cooling-off periods, they would have designed them in a different way, closer to optimality. The cooling-off period duration would be longer in cases where neither a seven-day nor a ten- or fourteen-day time period suffices to cure the economic distortions. Consumer laws would also contain provisions for monetary compensation, such as rental payment in order to avoid moral hazard and diminish the negative effects (higher prices, reduced offer). Cooling-off periods would not be prescribed where it could not be shown that consumers acted irrationally or entered into a contract without being adequately informed. Regulations would not instill addi-

tional information duties on the consumers' contracting parties if consumers were able to obtain this information during the cooling-off period. Finally, cooling-off periods would not be prescribed or, as a minimum, a waiver of the withdrawal rights would be allowed in cases where adverse effect may be generated by their application.

The goal of this article was not to give final answers to problems of irrational behaviour, situational monopoly, and asymmetric information in consumer markets. A number of questions for further research remain. Firstly, the statutorily fixed cooling-off periods are but one remedy to cure the inefficiencies mentioned. In this paper, a comparative analysis of the relevant EC Directives and the consumer laws of the fifteen EC Member States was made to see which rules best conform with the goal of allocative efficiency. Obviously, there are other regulatory techniques for addressing the problems with which cooling-off periods aim to deal. General rules of contract law, warranties and quality regulation were only briefly discussed; the main focus was on the comparison with cooling-off periods. Within the scope of this paper, a full analysis of the costs and benefits of other legal mechanisms was not possible. Secondly, the cooling-off periods examined in this paper apply only to particular contracts that the law stipulates and only if the latter are concluded under the specific conditions prescribed by the law. One could suggest granting cooling-off period in every case where irrational behaviour, situational monopoly, and information asymmetry problems are evident. This would then constitute a general standard rather than a specific rule; see the distinction made by Ehrlich and Posner (1974). Whether a standard is preferable to a rule depends on the costs it would generate. One should take into account that a standard may increase the total number of cases brought to court and, thus, the amount of resources devoted to dispute resolution. It could also increase the uncertainty concerning the existence of contracts after their conclusion, which may result in a reduction of the volume of valuable transacting. In a similar manner, further research must determine whether, from an efficiency point of view, general standards of contract law are to be preferred to specific rules on cooling-off periods.

APPENDIX

Cooling-Off Period Duration in the Consumer Protection Laws of the 15 Member States

Type of Contract / Country	Doorstep sales	Distances sales	Consumer credit	Other
Austria	7 days			30 days (insurance)
Belgium	7 days	7 days	7 days	30 days (insurance) 7 days (contracts of matrimonial intermediaries)
Denmark	7 days	7 days		6 days (real estate transactions)
Finland	7 days			10 days (timesharing)
France	7 days	7 days	7 days	10 days (timesharing) 10 days (home loans)
Germany	7 days		7 days	10 days (timesharing) 15 days (distant education) 15 days (doorstep sales of "Anteilscheine") 15 days (doorstep sales "ausländischer Investmentanteilen")
Greece	10 days	10 days		
Irelamd	7 days		10 days	
Italy	7 days	10 days		30 days (insurance) 10 days (timesharing) 7 days (doorstep or distance contracts on financial instruments, individual portfolios)

Cooling-Off Period Duration in the Consumer Protection Laws of the 15 Member States *(Continued)*

Type of Contract / Country	Doorstep sales	Distances sales	Consumer credit	Other
Luxemburg	Not allowed		2 days	
Netherlands	8 days			10 days (timesharing) (3 days real estate) proposal, not yet – August 2000 – in force
Portugal	7 days	7 days		14 days (timesharing)
Spain	7 days	7 days		10 days (timesharing)
Sweden	7 days			10 days (timesharing)
U.K.	7 days	(7 days, not yet – August 2000 – in force)	5 or 14 days	14 days (timesharing)

Cooling-Off Period Duration in EC Directives in Consumer Protection

EC DIRECTIVES	D/85/577/EEC Doorstep sales	D/97/7/EEC Distance	D/87/102/EEC Consumer sales	D/94/47/EEC Timesharing credit	D/90/619/EEC Life insurance	(Proposal for Directive on distance marketing of financial services)
	7 days	7 days		10 days	14 or 30 days	(14–30 days)

Austria. Sec. 3, 1 Consumer Protection Act (Konsumentenschutzgesetz) 247/1993 on doorstep sales: 7 days. Mail order regulated in Sec. 8 of Consumer Protection Act – no specific rights to rescind the contract. [Stern, 1995.]

Belgium. Art. 4, 2 Land Insurance Act (Loi sur le Contrat d'Assurance Terrestre modifiée par la loi du 16-3-1994) 25-6-1992: 30 days. Arts. 78, 1 and 88, 89 of Law 14-7-1991 on Trade Practices and on the Information and Protection of Consumers (Loi sur les Pratiques du Commerce et sur l'Information et la Protection du Consommateur): 7 days for distant and doorstep sales respectively. Art. 18, 1 and 2 of the Consumer Credit Act 12-6-1991 (Loi Relative au Credit à la Consommation): 7 days. Arts. 6, 6 and 7 of Law 9-3-1993 for regulating and controlling activities of Matrimonial Intermediaries (Loi tendant à reglementer et à controler les Activités des Entreprises de Courtage Matrimonial): 7 days. [Stuyck & Goemans, 1995.]

Denmark. Art. 8 Law 391/14.6.1995 regulates consumer protection when consumers buy real estate: 6 days. Arts. 6 and 11 Law No. 1098/12-12-1994 (originally Law No. 886 23.12.1987) on doorstep and distance selling: 7 days, respectively. [Borch, 1995.]

Finland. Art. 6, 3 Consumer Protection Act 1978 (additions of Law 390/1982): 7 days (doorstep sales). Art. 10, Consumer Protection Act 1978 (additions of Law 1162/1997): 10 days (timesharing). [Tuohino, 1995.]

France. Art. L. 121-23 Consumer Protection Code de la Consommation: 7 days (distance sales – démarchage à domicile). Art. L121-16 Code de la Consommation: 7 days (distance sales – vente à distance). Art. L311-15 (consumer credit – credit à la consommation): 7 days – it can be reduced to three days, if explicitly asked for by the consumer. Arts. L121-64 and 65 Code de la Consommation: 10 days (timesharing – multipropriété). Art. L312-10 Code de la Consommation: 10 days (home loan – credit immobilier, this is a deliberation period).

Germany. §1,3 Doorstep Sales Cancellation Act (Haustürwiderrufgesetz) 1986 and §7,1 Consumer Credit Act (Verbraucherkreditgesetz) 1990: 7 days. §5 Timesharing Act (Teilzeit-Wohnrechtsgesetz) 1996: 10 days. §4 Law on Consumer Protection in Distance Education (Fernunterrichtschutzgesetz) 1976/21-9-1997: 15 days. §11 Auslandinvestment-Gesetz 1969/9-9-1998: 15 days. §23 Gesetz über Kapitalanlagegesellschaften 1967: 15 days.

Greece. Arts. 3, 4 and 4, 10 Law 2251/1994 on Consumer Protection: 10 days for doorstep and distant sales, respectively.

Ireland. Sec. 30, 2 (sales credit), 50, 2 (general), 58, 5 (hire-purchase), 84, 5 (consumer-hire) Consumer Credit Regulations 1995: 10 days. Reg. 5 European Communities (Cancellation of Contractual Negotiations away from Business Premises) Regulations S.I. 224/1989: 7 days. [Bird, 1998.]

Italy. Arts. 4 and 6, 1 Legislative Decree 50/1992 on doorstep sales (Decreto Legislativo 15 gennaio 1992, n. 60 – Attuazione della direttiva CCE n. 577/85 in materia di contratti negoziati fuori dei locali commerciali): 7 days. Art. 111, 1 Legislative Decree 174/1995 (Decreto legislativo 17 marzo 1995, n. 174 – Attuazione della direttiva 92/96/CEE in materia di assicurazione diretta sulla vita): 30 days. Art. 30,

3 Legislative Decree 58/1998 (Decreto legislativo 24 febbraio 1998 n. 58 – Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52): 7 days for contracts concluded by distance or outside the seller's professional premises. Art. 41 Law 128/1998 on Timesharing (Multiproprietà) refers directly to Art. 5 of D/94/47/EEC which provides for a 10 day cooling-off period. The Legislative Decree 185/1999 which implements D/97/7/EEC on distance sales: 10 days.

Luxemburg. Law of 16/7/1987 (Loi concernant le colportage, la vente ambulante, l'etalage de marchandises et la sollicitation de commandes 16-7-87 ammended 26-3-97): Doorstep sales are not allowed. Art. 18 Consumer Credit Act 1993 (Loi réglementant le credit à la consommation 9/8/1993 amended 28/4/1998): 2 days.

Netherlands. Art. 25 Doorstep Sales Act (Colportage Wet) 1973: 8 days. Art. 7: 48c Dutch Civil Code: 10 days (timesharing). No cooling-off with respect to consumer credit in the Dutch Consumer Credit Act (Wet op het Consumentenkrediet) 395/4-7-1990. No law on distance sales yet. Draft art 7:2 Civil Code: (proposed) 3 day cooling-off period (sales of immovables). Recognised Education Institutes Act 1985 (Wet op de erkende Onderwijsinstellingen), Staatsblad 407/1985. [Klik, 1995].

Portugal. Decree 272/1987 on doorstep and distance sales: 7 days. Timesharing: 14 days. [Cabecadas Mendes, 1994.]

Spain. Art. 5, 1 Doorstep Sales Act 26/1991 (Protection de los consumidores en el caso de contratos celebrados fuera de los establecimientos mercantiles): 7 days. Art. 44 Ley 7/1996 de Ordenacion del Comercio Minorista: 7 days. Art. 10, 1 Timesharing Act 42/1998 (Ley sobre derechos de aprovechamento por turno de bienes inmuebles de uso turistico y normas tributarias): 10 days. Art. 9, 1 Law 28/1998 (de Venta a Plazo Bienes Muebles): 7 days, [Faus Santasusana, 1995; Lopez Sanchez, 1994]

Sweden. Art. 6 Door-to-Door Sales Act 1361/1981: 7 days (if applies also to contracts concluded by telephone, Art. 1, 2). Art. 12 Timesharing Act 218/1997 (Lag om konsumentskydd vid avtal om tidsdelat boende): 10 days. [Eklund, 1994.]

U.K. Reg. 3, 1 of the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 2117/1987: 7 days. Sec. 68 of Consumer Credit Act 1974: 5 or 14 days. Sec. 58, 1 and 61, 3 (of the same Act) on land mortgages: 7 days. Timesharing Act 1992 (as amended by the Timeshare Regulations 1997): 14 days. Consumer Protection (Contracts Concluded By Means of Distance Communication) Regulations 2000, which are scheduled to come into force by the end of 2000: 7 days. [Bourne, 1992; DTI, Consumer Affairs Directorate, Consumer White Paper: http: www2.dti.gov.uk/CACP/ca/supply2.htm, last revised 23 August 2000; West, 1995.]

EC Directives. Art. 5 Council Directive of 20 December 1985 to protect the consumer in respect of contracts concluded away from business premises 85/577/EEC, (OJ 1985 L372/31): 7 days. Art. 6 Directive 97/7/EEC (OJ 1997 L144/19) of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts: 7 days. Council Directive 87/102/EEC (OJ 1987 L42/48, as amended by D90/88/EEC, OJ 1990 L61/14 and D98/7/EEC, OJ 1998 L101/17) of 22 December 1986 for the approximation of the laws, regulations and administrative

provisions of the Member States concerning consumer credit states that the written deal "shall in include other essential terms of the contract" (Art. 4 D87/102/EEC). These are given, by way of illustration, in the Annex to the Directive and include the requirement to "show" the cooling-off period, if any. Art. 5 Directive 94/47/EEC (OJ 1994 L280/83) of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timesharing basis: 10 days. Art. 15 Second Directive of the Council of 8 November 1990 for the approximation of the laws, regulations and administrative provisions 90/619/EEC (OJ 1990 L330/50) on life insurance contracts: 14-30 days. Art. 4 Commission amended Proposal for a European Parliament and Council Directive concerning the distance marketing of consumer financial services and amending Directives 97/7/EC and 98/27/EC [COM (1999) 385 final, 23.09.99]: 14–30 days.

NOTES

[1] Seven days is the duration most often stipulated for cooling-off periods in doorstep and distance sales. Shorter cooling-off periods are (to the best of our knowledge) only the two-day period of the Luxembourg Consumer Credit Act 1993, the five-day period in the U.K. Consumer Credit Act 1974, the six-day period in the Danish Law 391/1995 for the purchase of real estate, and the proposed three-day duration of a cooling-off period in the Dutch draft article on real estate sales (7:2 of the Civil Code).

[2] It should be noted that the term doorstep sales is not only referring to sales literally concluded at the consumer's door (residence or place of work), but is generally used (in most legislations and commentaries) to describe all transactions concluded away from the seller's regular professional outlets.

[3] Dutch Recognised Education Institutes Act 1985.

[4] Art. 6, 1 Italian Decreto Legislativo 50/1992 in Materia di Contratti Negoziati Fuori dei Locali Commerciali.

[5] Similar: Art. 7 Swedish Door-to-Door Sales Act 1981, which stipulates that for "movables, the cooling-off period runs from the day on which the consumer took delivery of the goods or a material part thereof, or prior thereto, examined the goods or similar goods."

[6] Art. 4, 2 Belgian Land Insurance Act 1992; Art. 111, 1 Italian Legislative Decree 174/1995.

[7] Austrian Act on doorstep sales 247/1993: extension to 1 month; Art. 6, 2 Italian Leg. Decree 50/1992 on doorstep sales: extension to 2 months; §2 German Haustürwiderrufgesetz: 1 month extension, §7, 2 Verbraucherkreditgesetz 1990: extension to 1 year; Art. 5, 1 D 94/47/EEC on timesharing and Art. 6, 1 D 97/7/EEC on distance sales: extension to 3 months; Art. 10, 2 of Spanish Law 42/1998 on timesharing: extension to 3 months.

[8] § 7, 2 Verbraucherkreditgesetz 1990.

[9] Art. 10, 2 Spanish Timesharing Act 1998; § 5, 2 German Timesharing Act 1996; Art. 41 Italian Timesharing Act 1998.

[10] Art. 5 D/94/47/EEC on Timesharing.

[11] Art. 88 Belgian Trade Practices Act 1991; Art. 3, 1 Greek Law 2251/1994; Bird (1998), at p. 323; Art. 5 Swedish Door-to-Door-Sales Act 1981; Reg. 4, 1 U.K. Regulations on Doorstep Contracts 1987.

[12] Art. 4, 2 Greek Law 2251/1994.
[13] Art. 4, 9 Greek Law 2251/1994.
[14] Arts. 4 and 5 EC Directive 97/7. Art. 5 mentioning that confirmation of the given information may be omitted if it is given "prior to conclusion of the contract in writing or on another durable medium" may meet the criticism in question.
[15] Arts. 77–83 Belgian Trade Practices Act; Art. 5 of the Italian Legislative Decree 50/1992 on doorstep sales; Arts. 3, 1 and 4, 2 of the Greek Law 2251/1994.
[16] Section 50, 4 Irish CCA; Section 67 U.K. CCA.
[17] Art. L 312–10 French Consumer Protection Code.
[18] While the Belgian (Art. 89), Greek (Art. 3, 5), Spanish (Art. 6, 2) and French doorstep stipulations do not allow for any kind of payment during the cooling-off period, one can deduce from the relevant provisions of other Member States (i.e., Art. 8, 3 Italian Decree 50/1992 on doorstep sales; Reg. 5, 1 U.K. Regulations 2117/1987; Reg. 6 Irish Regulations 224/1989; Art. 6 Spanish Doorstep Act 1998) that in the latter jurisdictions, such payment is allowed. The same is true for the Doorstep Directive, which in Art. 7 delegates the matter of reimbursement of payments to the Member States. With respect to payment in transactions concluded by distance, D/97/7/EEC does not contain any stipulations on the matter; neither does the French Consumer Protection Code. The Belgian Trade Practices Act 1991 explicitly forbids payment during the cooling-off period, while the Green Law 2251/1994 allows it.
[19] In this respect, Reg. 5, 2 U.K. Regulations 2117/1987, Reg. 6 Irish Regulations 224/1989, Sec. 70, 2 U.K. Consumer Credit Act. 1974, and Art. 10 Swedish Door-to-Door-Sales Act 1981, stipulating that the consumer shall have a lien on goods for any sum repayable to him, may be regarded as efficient.
[20] Art. 6, 2 D 97/7/EEC.
[21] Art. 79, 2 Belgian Trade Practices Act 1991; Art. 3, 3 Spanish Law D26/1991, Reg. 4, 1.3 U.K. Regulations 2117/1987; § 2 German Haustürwiderrufgesetz 1986; Art. 4 D/85/577/EEC, Art. 4 D94/47 and Arts. 4 and 5 of D/97/7/EEC.
[22] Art. 18, 3 Belgian Loi Relative au Credit à la Consommation 1991.
[23] Art. 91 Belgian Loi sur les Pratiques du Commerce et sur l'Information et la Protection du Consommateur 1991.
[24] § 3 German Haustürwiderrufgesetz 1986.
[25] Art. 9, 1 Spanish Law 28/1998 de venta a plazos de bienes muebles.
[26] Art. 18 regulates the maximum amount of the penalty imposed on the consumer who exercises his withdrawal right (3% of the cash price of the good).
[27] § 5, 6 German Teilzeit-Wohnrechtsgesetz 1996.
[28] Art. 11, 2 Spanish Timesharing Act 1998.
[29] No kind of sanction or penalty can be imposed on the consumer, in case of cancellation of the credit agreement, see Art. 12 Spanish Timesharing Act 1998.
[30] Art. 87 Belgian Loi sur Les Pratiques du Commerce et sur l'Information et la Protection du Consommateur 1991; Art. 3, 7c Greek Law 2251/1994; Sec. 3,2.b U.K. Regulations 2117/1987; Art. 2 Spanish Law on "proteccion de los consumidores en el caso de contratos celebrados fuera de los establecimientos mercantiles" 1991; Art. 1,3,2 Swedish Door-to-Door Sales Act 1981.
[31] Art. L. 121-26 French Consumer Protection Code (Code de la Consommation); Arts. 78, 2 and 89 Belgian Trade Practices and Consumer Protection Act 1991; Reg. 6 Irish Regulations 224/1989; Art. 3, 5 Greek Law 2251/1994; Art. 11, 1 Spanish Law 42/1998; Art. 7 D/85/577/EEC; Art. 6 D/94/47/EEC.
[32] Art. 8, 3 Italian Doorstep Decree 50/1992; Reg. 5,1 U.K. Regulations 2117/1987; Sec. 5 and 6 U.K. Timesharing Act 1992; Reg. 6 Irish Law 224/1989, Art. 6 Spanish Doorstep Act 26/1992.

[33] Art. L. 331-17 French Consumer Protection Code.
[34] Art. 18 Belgian Consumer Credit Act 1991.
[35] Art. L. 311-15 French Code de la Consommation.
[36] Sec. 50, 2 Irish Consumer Credit Act 1995.
[37] Art. 89 Belgian Trade Practices and Consumer Information Act 1991; Art. L. 121-26 French Consumer Protection Code.
[38] Art. 4, 10 Greek Law 2251/1994 on Consumer Protection.
[39] Art. 6, 3 D/97/7/EEC on the Protection of Consumers in respect of Distance Contracts.

REFERENCES

Akerlof, G. (1970). The market for lemons: Qualitative uncertainty and the market mechanism . *Quarterly Journal of Economics*, *84*, 487–500.

Alexandridou, E. (1996). *Consumer protection law, Greek and Community Law II*. Thessaloniki: Ant Sakkoula. (In Greek).

Arrow, K. J. (1982). Risk perception in psychology and economics. *Economic Inquiry*, *20*, 1–8.

Barefoot, Marrinan, & Associates, Inc., Thakor, A. V., & Beltz, J. C. (1993). *Common ground: Increasing consumer benefits and reducing regulatory costs in banking*. Madison, WI: University of Wisconsin, Herbert V. Prochnow Education, General Banking Study.

Bird, T. (1998). *Consumer credit law in Ireland*. Dublin: Round Hall.

Borch, S. (1995). Denmark. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Bourgoignie, T. (1992). Characteristics of consumer law. *Journal of Consumer Policy*, *14*, 293–315.

Bourne, T. (1992). Cooling-off on timeshares. *New Law Journal*, March 27, p. 418.

Cabecadas Mendes, I. (1994). The development of Portuguese consumer law with special regard to conflict resolution. *Journal of Consumers Policy*, *17*, 113–122.

Calais-Auloy, J., Bricks, H., Calais-Auloy, M.-T., Maury, J., Steinmetz, F., & Temple, H. (1982). *Consumer legislation in France*. New York: Van Nostrand Reinhold.

Chambraud, A., Foucher, P., & Morin, A. (1994). The importance of community law for French consumer protection legislation. *Journal of Consumer Policy*, *17*, 23–37.

Conlisk, J. (1996). Why bounded rationality? *Journal of Economic Literature*, *34*, 669–700.

Consumer Affairs and Competition Policy Directorate (1998). Distance Selling Directive – Implementation in the U.K., June 1998. http://www.dti.gov.uk/CACP/ca/distcon.htm.

Cooter, R., & Ulen, T. (1996). *Law and economics*. Reading, MA: Addison-Wesley.

Deligiannis, I., & Kornilakis, P. (1992). *Law of obligations III*. Thessaloniki: Ant Sakkoula. (In Greek.)

Ehrlich, I., & Posner, R. (1974). An economic analysis of legal rule-making. *Journal of Legal Studies*, *3*, 257–286.

Eisenberg, M. (1982). The bargain principle and its limits. *Harvard Law Review*, *95*, 741. Reprinted in: K.G. Dau-Schmidt & T. S. Ulen (Eds) (1998) *Law and economics anthology*, pp. 301–316. Cincinnati, OH: Anderson Publishing.

Eklund, P. (1994). The effect of the EEA agreement on consumer protection interests in Sweden. *Journal of Consumer Policy*, *17*, 123–133.

Emons, W. (1989). The theory of warranty contracts. *Journal of Economic Surveys*, *1*, 43–57.

Eskridge, N. M., Jr. (1984). One hundred years of ineptitude: The need for mortgage rule consonant with the economic and psychological dynamics of the home sale and loan transaction. *Virginia Law Review*, *70*, 1083–1217.

Faus Santasusana, J. (1995). Spain. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Furubotn, E., & Richter, R. (1998). *Institutions and economic theory. The contribution of the new institutional economics*. Ann Arbor, MI: The University of Michigan Press.

Goetz, C., & Scott, R. (1980). Enforcing promises: An examination of the basis of contract. *Yale Law Journal*, *89*, 1261. Reprinted in: K. G. Dau-Schmidt & T. S. Ulen (Eds) (1998), *Law and economics anthology*, pp. 236–254. Cincinnati, OH: Anderson Publishing.

Harvey, B., & Parry, D. (1992). *The law of consumer protection and fair trading*. London: Butterworths.

Karakostas, I. (1994). *Consumer protection, L. 2251/94*. Athens: Ant Sakkoula. (In Greek.)

Kay, J., & Vickers, J. (1990). Regulatory reform: An appraisal. In: G. Majone (Ed.), *Deregulation or re-regulation: Regulatory reform in Europe and the United States*, pp. 223–251. London: Pinter Publishers.

Klik, P. (1995). The Netherlands. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Loewenstein, G., & Thaler, R. (1989). Anomalies. Intertemporal choice. *Journal of Economic Perspectives*, *3*, 181–193.

Lopez Sanchez, M.-A. (1994). Implementation of EEC consumer protection directives in Spain. *Journal of Consumer Policy*, *17*, 83–99.

Nelson, P. (1970). Information and consumer behaviour. *Journal of Political Economics*, *78*, 311–329.

Ogus, A. (1994). *Regulation. Legal form and economic theory*. Oxford: Clarendon Press.

Rabin, M. (1998). Psychology and economics. *Journal of Economic Literature*, *36*, 11–46.

Stathopoulos, M., Chiotellis, A., & Augoustianakis, M. (1995). *European civil law I. Implications of community directives on the law of the Civil Code*. Athens: Ant Sakkoula. (In Greek).

Stern, E. (1995). Austria. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Stuart, C. (1977). Consumer protection in a market where sellers have better information than buyers. In: *Law and Economics. Report from a symposium in Sweden*, pp. 155–164. Lund: Juridiska Föreningen.

Stutterheim, R.H. (1992). Contract law in year 1992 in Europe and The Netherlands: Law for the consumer or law for the market? In: T. Wilhelmsson (Ed.), *Perspectives of critical contract law*, pp. 349–358. Aldershot: Dartmouth.

Stuyck, J., & Goemans C. (1995). Belgium. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Trebilcock, M. J. (1993). *The limits of freedom of contract*. Cambridge, MA: Harvard University Press.

Trebilcock, M. J., & Dewees, D. N. (1981) Judicial control of standard form contracts. In: P. Burrows & C. Velsanovski (Eds), *The economic approach to law*, pp. 93–118. London: Butterworths.

Tuohino, T. (1995). Finland. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

Van den Bergh, R. (1996). Wer schützt die europäischen Verbraucher vor dem Brüsseler Verbraucherschutz? Zu den möglichen adversen Effekten der europäischen Richtlinien zum Schutze des Verbrauchers, Effiziente Verhaltenssteuerung und Kooperation in Zivilrecht. In: *Beiträge zum V. Travemünder Symposium zur ökonomischen Analyse des Rechts, 27–30 März 1996*, pp. 77–102. Tübingen: Mohr Siebeck.

Weatherill, S. (1997). *EC consumer law and policy*. Edinburgh: Addison-Wesley.

West, L. (1995). U.K. In: D. Campbell (Ed.), *International consumer protection centre for international legal studies*. Dordrecht: Nijhoff.

THE AUTHORS

Pamaria Rekaiti is a PhD candidate, and participant in the Graduate Programme of the Institute of Law and Economics, University of Hamburg, Von-Melle-Park 5, R.2161, D-20146, Hamburg, Germany. Fax: +49 40 42838 4653; e-mail: p-rekaiti@jura.uni-hamburg.de. Roger Van den Bergh is Professor of Law and Economics, Erasmus University Rotterdam, Room L 5-121, P.O. Box 1738, NL-3000 DR Rotterdam. Fax: +31 10 4089191; e-mail: r.vandenbergh@frg.eur.nl.

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