

**AN ANALYSIS OF THE “RIGHT OF
TERMINATION”, “RIGHT OF
CANCELLATION” AND “RIGHT OF
WITHDRAWAL” IN OFF-PREMISES AND
DISTANCE CONTRACTS ACCORDING TO
EU DIRECTIVES**

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Abstract: Several are the European Directives dedicated to e-commerce, focussing on consumer rights, the distance marketing of consumer financial services and the protection of consumers in distance contracts. In contract law, the terms “termination”, “withdrawal” and “cancellation” have peculiar and distinct meaning. Nonetheless, they tend to be misused and applied interchangeably. This article will shed light on these relevant terms in the light of EU Directives on the protection of consumer rights in off-premises

and distance contracts. To do so, it will first present instances in which the meaning and use of these terms is either clear-cut or somehow blurred. By analysing word usage and meaning in context, it will explore how EU Directives, and EU drafters in general, made (un)ambiguous distinctions. Then, it will investigate whether English-speaking drafters (such as those of the pre-Brexit UK, Ireland and Malta) made a consistent use of such terms. Finally, this paper will explore whether online conditions of sale written in English by non-English speaking sellers or traders (such as Italian and Polish) also make a consistent use of the terms. The paper findings highlight that the use and legal purpose of these terms in European Directives have not been particularly consistent over the years. Furthermore, Member States’ system-specificity has weighed on the meaning, application and scope of the terms. On the other hand, at EU level the absence of a unique legal system of reference and the challenges of harmonization may have created false equivalences.

Keywords: e-commerce; consumer rights; legal terminology; near-synonyms; legal discourse; off-premises contracts.

**ANALISI DEL “RIGHT OF TERMINATION”,
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IN CONTRATTI A DISTANZA E FUORI DAI LOCALI
COMMERCIALI SECONDO LE DIRETTIVE EUROPEE**

Riassunto: Vi sono numerose Direttive europee dedicate all’e-commerce che tutelano i diritti dei consumatori; la commercializzazione a distanza di servizi finanziari ai consumatori e la tutela dei consumatori in contratti a distanza. Nel common law, i termini “termination”, “withdrawal”, e “cancellation” si contraddistinguono in quanto assumono significati ben precisi. Tuttavia, sono spesso impiegati in modo errato ed usati intercambiabilmente. Il presente articolo discute la suddetta terminologia alla luce delle Direttive europee sulla tutela dei diritti dei consumatori in contratti a distanza e fuori dai locali commerciali. A tal fine, si presentano e discutono esempi in cui l’uso ed il significato di tali termini è a volte chiaro ed altre volte poco cristallino. Analizzando l’uso ed il significato dei termini nel contesto, si evidenzia se e come le Direttive europee, ed i legislatori europei più in genere, hanno stabilito chiare distinzioni. Successivamente, si analizza se i paesi madrelingua inglese (quali la Gran Bretagna pre-Brexit, l’Irlanda e Malta) hanno impiegato tali termini coerentemente con le Direttive. Infine, si esaminano i termini e le condizioni di vendita online redatti in lingua inglese da rivenditori non madrelingua inglese (quali Italiani e Polacchi) per verificare se l’impiego di tale terminologia è altrettanto coerente. L’articolo evidenzia che, nel corso del tempo, l’uso e l’ambito di applicazione di tali

termini nelle Direttive europee è stato piuttosto frammentario. Le specificità dei sistemi giuridici degli Stati Membri hanno probabilmente inficiato sul significato, sull'applicazione e sull'ambito di utilizzo dei suddetti termini. Inoltre, l'assenza a livello europeo di un unico sistema giuridico di riferimento e le difficoltà di armonizzazione, hanno probabilmente dato origine a false equivalenze.

Parole chiave: e-commerce; diritti dei consumatori; terminologia giuridica; polisemia; discorso giuridico; contratti a distanza e fuori dai locali commerciali.

1. Introduction

There are many European Directives dedicated to e-commerce. Directive 2011/83/EU, for instance, focuses on consumer rights and has recently been amended by Directive 2019/2161/EU for a better enforcement and modernisation of Union consumer protection rules. Directive 2002/65/EC addresses distance marketing of consumer financial services and Directive 97/7/EC is on the protection of consumers in distance contracts.

Hence, this section will provide a literature review on EU Directives addressing consumers' rights.

1.1. The right of withdrawal, termination and cancellation in EU Directives

The European Directive 97/7/EC on the protection of consumers in distance contracts defines “consumer” as a person who is concluding a contract for personal reasons; i.e., not for business purposes:

‘consumer’ means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession. [Article 2 (2)]

The same Directive defines “distance contracts” as contracts concluded at distance:

‘distance contract’ means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded. [Article 2 (1)]

Directive 2011/83 also adds the concept of “off-premises contracts” as those entered into “in a place which is not the business premises of the trader” [Article 2 (8) (a)] or, amongst others, “through any means of distance communication” [Article 2 (8) (c)].

1.1.1. Right of withdrawal

As regards distance and off-premises contracts, the European Directive 2011/83 on consumer rights and the later European Directive 2019/2161 regarding a better enforcement and modernisation of Union consumer protection rules also establish a “right of withdrawal” in order to enhance consumer protection. According to these Directives, the consumer may exercise the right to change his/her mind without providing a reason (Sánchez Abril et al. 2018: 43). In particular, according to the European Directive 2019/2161, the consumer has the right “to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not” (par. 30 of the premises of Directive EU 2019/2161; see also par. 48 of the premises of Directive EU 2011/83). In addition, Annex 1 of the Directive 2011/83 contains a document named “Model instructions on withdrawal”, which can be used when entering into off-premises contracts. These instructions report the following sample sentence which sellers should communicate to consumers: “[y]ou have the right to withdraw from this contract within 14 days without giving any reason”.

In light of the above, the right of withdrawal is not perceived as a remedy for, e.g., breaches of contract, but it is a statutory right (Sánchez Abril et al. 2018: 44). In case of non-performance of the contract, in fact, the Directive 2011/83 gives the consumer the right of termination. The following excerpt provides an example:

[I]f the trader fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed. [Premises, par. 52 and Article 18]

Article 18, par. 4, further entitles the consumer to obtain other remedies:

In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided for by national law.

Therefore, the right of termination is perceived as a form of redress. This is corroborated by Directive 2019/2161. Article 11a, entitled “Redress”, provides that, in case of an unfair conduct by the seller, the consumer is entitled to remedies and/or the termination of the contract:

Consumers harmed by unfair commercial practices, shall have access to proportionate and effective remedies, including compensation for damage suffered by the consumer and, where relevant, a price reduction or the termination of the contract.

1.1.2. Right of termination

On the basis of the European Directives above-mentioned, it is apparent that the term “withdrawal” refers to an action whereby the consumer puts an end to a contract for whatsoever reason (e.g., having second thoughts and changing his/her mind), whereas “termination” is considered a remedy which the consumer is entitled to in case of damage and/or non-performance of the contract by the seller.

However, this is not so straightforward as far as ancillary contracts are concerned. Directive 2011/83 defines them as contracts related to the main contract and subordinated to it:

Ancillary Contract: contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader. [Article 2 (15)]

In particular, Directive 2011/83 establishes the right to terminate ancillary contracts in case of withdrawal from a distance or an off-premises contract, as this extract clearly shows:

[I]f the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated.
[Article 15 (1)]

From Article 15 above, it is apparent that the termination of ancillary contracts is a statutory right, not a remedy as in the other circumstances above-mentioned. In this case, it is the opinion of the author that the term “terminated” may create some confusion. In common law systems, for example, the lemma “terminate” is used when a contract is ended for reasons other than its natural expiry (see Giampieri in press: 45-50). For this reason, the verbs “ended” or “set aside” would have been preferable.

1.1.3. Right of cancellation

Term “cancellation” raises the same issues. This term is used in Directive 97/7/EC, on the protection of consumers in respect of distance contracts, and Directive 2002/65/EC, concerning the distance marketing of consumer financial services. Directive 97/7/EC (Article 6, “Right of Withdrawal”) states that

[T]he credit agreement shall be **cancelled**, without any penalty, if the consumer exercises his right to withdraw from the contract in accordance with paragraph 1.

The paragraph 1 in question establishes as follows:

For any distance contract the consumer shall have a period of at least seven working days in which to **withdraw** from the contract without penalty and without giving any reason.

In this case, the terms “cancel” and “withdraw” are used interchangeably to entitle the consumer to put an end to a contract because s/he changed his/her mind.

Directive 2002/65/EC, instead, establishes the following (Article 11, “Sanctions”):

Member States shall provide for appropriate sanctions in the event of the supplier's failure to comply with national provisions adopted pursuant to this Directive. They may provide for this purpose in particular that the consumer may **cancel** the contract at any time, free of charge and without penalty.

In this case, the right to cancel a contract is perceived as a remedy in case the seller neglects national provisions. Therefore, as can be guessed, distinctions between the terms “cancel” and “withdraw” are somehow blurred.

1.1.4. Discussion

This section presents a general discussion of the analysis carried out above. Table 1 summarizes the major findings.

Table 1. “Withdrawal”, “cancellation” and “termination” in the EU Directives

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate
EU Directives	Consumer’s right to have second thoughts and change his/her mind (Directives 2011/83 and 2019/2161)	(1) “Ending” a contract in case of withdrawal (Directive 97/7) (2) Redress in case of supplier’s failure to comply with national provisions (Directive 2002/65)	(1) Redress in case of damage suffered (Directives 2011/83 and 2019/2161) (2) “Ending” ancillary contracts in case of withdrawal from an off-premises contract (Directive 2011/83)

Table 1 above shows that according to the many EU Directives, the term “withdraw” refers to a consumer’s right to end the contract because he/she changed his/her mind. The lemma “cancel” has the same meaning of “withdraw” but, in some cases, it may refer to

ending a contract in case of failure to comply with national provisions. The lemma “terminate”, instead, is a form of redress in case of breach of contract and it is the term used to end ancillary contracts in case of withdrawal.

1.1.5. Considerations

As can be noted, the terms “withdraw”, “terminate” and “cancel” have not always been used consistently by the European drafters. This might be owing to difficulties in drafting documents and using terms which must be applied in and by all Member States (see the comments by Jacometti and Pozzo 2018: 12ff). Other reasons for a non-clear-cut use of these legal terms could be due to the fact that the European drafters resort to concepts and institutions already existing in national legal systems (Šarčević 2000). When applying them to European documents without referring to a particular legal system, there might be room for misinterpretation or ambiguity. Also, semantic neologisms and resemantization processes may take place when adopting and adapting legal terms across the European Union (Sagri and Tiscornia 2009; Jacometti and Pozzo 2018: 85). In particular, the resemantization process consists of a change of meaning of words and is defined as “the transposition of a single term or series of words already existing in a language and the adaptation of its meaning to European Union law, with consequent semantic enrichment” (Mariani 2018: 83). There might also be instances of imprecision or inaccuracy (Jacometti and Pozzo 2018: 177-178) which weigh on the choice and use of the legal terminology to apply. A case in point is the former Directive 85/577 (later abrogated by Directive 2011/83) which, in the English version, considered as equal the consumer’s “right of cancellation” and the “right of renunciation” in distance contracts. In this regard, it is worthwhile mentioning that the “right of renunciation” is inexistent in the contract law of English-speaking countries. The People’s Law Dictionary (Hill and Thompson Hill 2002), for example, describe “renunciation” as “giving up a right, such as a right of inheritance, a gift under a will or abandoning the right to collect a debt on a note”. Therefore, such a right does not entitle a party to terminate or end a contract. Hence, the “right of

renunciation” is a clear example of neologism (or resemantization if the term was already in use in other Member States’ legal systems).

1.2. The legal English within the EU

In light of the comments made above, a few more words should now be dedicated to the legal English of the European Institutions.

It is well known that the legal English of the European Union is not grounded in a legal system (Jacometti and Pozzo 2018: 29). It is, in fact, a language based on a set of common criteria with the aim of fostering harmonization among the Member States. Hence, the legal English of the European Institutions (and of EU drafters) is not based on a specific legal system. For this reason, the legal English of the EU may be considered a unique language (see Giampieri 2016) and it would be too risky to compare it with the legal English of common law countries.

Therefore, the legal terminology and legal language adopted by EU drafters may not correspond to, or may have different meanings from existing legal terms adopted by the Member States.

2. Aim of the paper and research question

Given the above, it is now interesting to explore how English and non-English speaking countries of the European Union address the terminology used in the EU Directives.

Therefore, this paper is aimed at shedding light on the use of the terms “withdrawal”, “termination” and “cancellation” in distance and off-premises contracts across EU Member States.

To this aim, the Regulations and Statutes adopted in the (pre-Brexit) UK, Ireland and Malta will be analysed, in order to bring to the fore similarities or discrepancies in the use of the EU nomenclature.

Afterwards, the English versions of some distance and off-premises contracts of non-English speaking countries will be focused on. The use of the English terminology will be analysed in order to

verify similarities or discrepancies with the terms suggested by EU Directives.

Therefore, the research questions of this paper are the following: are the “right of withdrawal”, “right of termination” and “right of cancellation” used consistently in the law of English-speaking countries across the EU? Are the “right of withdrawal”, “right of termination” and “right of cancellation” used consistently in distance and off-premises contracts drafted in English in non-English speaking countries across the EU?

Consequently, this paper will explore how and if the terms “withdrawal”, “termination” and “cancellation” used in the Statutes and Acts of English-speaking countries and in the English versions of distance contracts in non-English-speaking countries assume similar or different meanings depending on the contexts and/or the legal systems of reference.

3. Analysis

This section of the paper will present an overview of the legal terminology used by the (pre-Brexit) British, Irish and Maltese drafters as far as distance and off-premises contracts are concerned. In order to do so, the laws and statutes implementing the EU Directives above-mentioned will be considered and the use of the terms “withdraw”, “cancel” and “terminate” will be investigated.

Then, this section will focus on the legal English terminology used in distance and off-premises contracts drafted in non-English speaking countries. In order to do so, a corpus of online Italian and Polish terms and conditions of sale/service written in English will be considered and analysed. The analysis will explore whether the terms “withdraw”, “cancel” and “terminate” are used consistently and have the same meaning(s) intended by the EU drafters.

3.1. Overview in English-speaking countries

This section will present an analysis of the terms “withdraw”,

“cancel” and “terminate” in distance and off-premises contracts in Great Britain, Ireland and Malta.

3.1.1. The UK

The Directive 2011/83 was implemented in the UK through the *Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013*. The Regulations clearly refer to a “right to cancel” a contract within 14 days without giving any reason. In particular, Part 3, entitled “Right to Cancel”, at (28) (1) states that

The consumer may **cancel** a distance or off-premises contract at any time in the **cancellation** period without giving any reason, and without incurring any costs.

Part 3 (29) further establishes that “the cancellation period ends at the end of 14 days after the day on which the contract is entered into” or “after the day on which the goods come into the physical possession” depending on whether the seller provides services or goods.

Still Part 3 (37), however, points out that

[I]f a consumer **withdraws** an offer to enter into a distance or off-premises contract, or **cancels** such a contract under regulation 28(1), any ancillary contracts are automatically **terminated**.

In this last excerpt, three apparently similar terms come to the fore, such as “withdraw”, “cancel” and “terminate”. It is not clear why an off-premises contract is “cancelled” but ancillary contracts are “terminated”, and the Regulations do not provide any clear-cut definition of or distinction among the terms.

Moreover, as can be noticed in the example above-mentioned, the term “withdraw” is used (i.e., collocates) with “offer”. Apparently, the British drafters preferred the following collocations, or formulae: “withdraw an offer” and “cancel a contract”.

Nothing is mentioned in the Regulations as far as a failure to deliver the goods or to provide the service is concerned. Therefore, nothing is established in case of damage suffered by the consumer. Table 2 here below clarifies these findings.

Table 2. “Withdrawal”, “cancellation” and “termination” in the UK law

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate
UK Law - Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013	“Withdraw” only refers to (i.e., collocates with) “offers”, not “contracts”.	Consumer’s right to have second thoughts and change his/her mind	“Ending” ancillary contracts in case of cancellation of an off-premises contract

As can be seen, the term “withdraw” only refers to “offers”; the term “cancellation” is used to express the consumer’s right to withdraw from a contract before the natural end, and the term “termination” is only used to end ancillary contracts in case of premature withdrawal.

3.1.2. Ireland

The Irish drafters used almost the same terminology as the British. The EU Directive 2011/83 was implemented in Ireland through *S.I. (Statutory Instrument) No. 484 of 2013*, namely the *European Union (Consumer Information, Cancellation And Other Rights) Regulations 2013*. Part 4, entitled “Right to cancel distance contracts and off-premises contracts, at (14) (1) provides that

[T]he consumer may, at any time prior to the expiry of the **cancellation** period applicable under Regulation 15 or Regulation 16, cancel a distance contract or an off-premises contract without giving any reason for the **cancellation**.

Part 4 (15) further establishes that the cancellation period expires after 14 days from the day on which the contract is concluded” or “from the day the consumer acquires physical possession of the goods”.

As can be seen, no mention to a “right of withdrawal” is present, but, instead, the Irish drafters prefer using the term “cancel”.

Still Part 4 (23) (2) states that “[w]here a consumer cancels a distance or off-premises contract in accordance with this Part, any ancillary contract is automatically terminated”. As with the UK Regulations, the uses and meanings of the terms “cancel” and “terminated” seem rather blurred.

In case of non-delivery of goods (or non-provision of services), the Irish drafters establish that “the buyer may treat the failure as a breach of a condition of the contract which entitles the buyer to repudiate the contract” (Part 6, 29, 2E). It is self-evident that the legal institution of the “Repudiation” comes into play. However, in the common law system, it is generally invoked in case of anticipatory breaches (Hill and Thompson Hill 2002). The People’s Law Dictionary, in fact, defines “repudiation” as a “denial of the existence of a contract and/or refusal to perform a contract obligation” before “fully performing those obligations” (Hill and Thompson Hill 2002). Therefore, not only do the Irish drafters not use the term set forth by the European Directives (namely, “terminate”), but they also seem to misuse a common law term.

Furthermore, as anticipated above, the Statute does not mention any right to withdraw or right of withdrawal. Hence, this term is apparently not used.

Table 3 below summarizes these findings.

Table 3. “Withdrawal”, “cancellation” and “termination” in Irish law

Source	Cancellation; right to cancel	Termination; right to terminate	Repudiation
Irish Law - European Union (Consumer Information, Cancellation And Other Rights) Regulations 2013	Consumer’s right to have second thoughts and change his/her mind	“Ending” ancillary contracts in case of cancellation of an off-premises contract	Redress in case of damage suffered

As can be noticed, the word “cancellation” is used to express the consumer’s right to withdraw from a contract before the natural end, whereas the term “termination” is only used to end ancillary contracts in case of premature withdrawal. Also, “repudiation” is a way to end a

contract in case of damage suffered by a party.

3.1.3. Malta

The Maltese *Subsidiary Legislation 378.17 Consumer Rights Regulations* adopted the same nomenclature proposed by the EU drafters. Cap 426 (10), entitled “Right of Withdrawal” states, in fact, the following:

[T]he consumer shall have a period of fourteen (14) days to **withdraw** from a distance or off-premises contract, without giving any reason, and without incurring any costs.

As regards the use of the term “termination”, the Maltese Regulations are in line with the nomenclature used by the EU Directives. Par. 17 (1), in fact, states that

[I]f the consumer exercises his right of **withdrawal** from a distance or an off premises contract in accordance with regulations 10 to 16, any ancillary contracts shall be automatically **terminated**.

The word “termination” is also used in case of non-performance of the contract. Par. (20) (2) of Part IV, entitled “Other Consumer Rights”, states the following:

If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to **terminate** the contract.

Hence, the right to terminate a contract is perceived both as a statutory right and a remedy, as in the EU Directives. There is no mention of any right of “cancellation”.

Table 4 below summarizes the analysis carried out above.

Table 4. “Withdrawal”, “cancellation” and “termination” in Maltese law

Source	Withdrawal; right to withdraw	Termination; right to terminate
Maltese Law - Subsidiary Legislation	Consumer’s right to have second thoughts	(1) “Ending” ancillary contracts in case of

378.17 Consumer Rights Regulations	and change his/her mind	withdrawal from an off-premises contract (2) Redress in case of damage suffered
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As can be guessed from Table 4 above, the term “withdrawal” refers to the consumer’s right to end a contract before the natural expiry. The word “termination”, instead, refers both to the possibility to end ancillary contracts in case of premature withdrawal, and to set a contract aside in case of damage suffered by a party.

3.1.4. Considerations

It is evident that the terminology used in the UK and Ireland is different from the one used by the EU drafters. This might be due to different uses and meanings of legal institutions (such as “cancellation”) characterising the legal systems of such countries. Exploring in details the reasons for such discrepancies would go beyond the scope of this paper. It was, nonetheless, considered relevant pointing it out because the words “termination”, “cancellation” and “withdrawal” seem to assume blurred meanings. As far as Malta is concerned, instead, no discrepancies were found *vis-à-vis* the uses and meanings of the terminology proposed by the EU drafters. Appendix 1 reports an overview of these terms and the circumstances in which they apply.

Given the considerations above, it is likely that the legal language of non-English speaking countries may be affected by similar discrepancies or non-equivalences, especially when translating from a native language into English as a second language (in this respect, see the research paper by Sacco 1991).

3.2. Non-English speaking countries

This section will analyse the terms “withdraw”, “cancel” and “terminate” in the English versions of online terms and conditions of

sale/service proposed by non-English countries such as Italy and Poland.

In particular, this section will explore to what extent these terms are consistent with the ones mentioned in the EU Directives referred above.

In order to do so, a corpus of online terms and conditions of sale/service written in English will be analysed. This section will firstly describe in detail the corpus composition, then it will analyse each corpus separately (Italian, Polish) and it will shed light on the use and meaning of the terms “withdraw”, “cancel” and “terminate”. Finally, it will comment on the findings by making comparisons with the terms suggested by the EU drafters.

3.2.1. Corpus compilation

This section will outline the way the corpus of Italian and Polish terms and conditions of sale/service written in English was composed.

Firstly, each language (i.e., Italian and Polish) was dealt with separately. In order to compose each sub-corpus, the BootCaT freeware software (Baroni and Bernardini 2004) was used. In particular, the semi-automatic mode was applied.

As far as the Italian sub-corpus is concerned, the following keywords were googled: “*terms and conditions of*” *site:.it*. The command *site:.it* allowed to retrieve documents only in .it (i.e., Italian) domains. The first 10 Google results pages were saved onto the computer.

The same procedure was followed in order to build the Polish sub-corpus, with the only difference that the “site” command was *site:.pl*.

The queries above allowed to retrieve the exact words “terms and conditions of” in the selected domains (Italian and Polish, respectively). Furthermore, as contracts were sourced online, the process ensured that distance contracts were focused on.

Afterwards, the BootCaT software was launched and the “local queries” mode was chosen. In this way, the software built the two corpora in a matter of few seconds (one corpus at a time).

At the end of the compilation process, the Italian corpus was

composed of 89 txt documents (14,180 word types and 306,842 tokens), whereas the Polish corpus was composed of 83 txt documents (10,287 word types and 245,823 tokens).

All corpora were analysed by using AntConc offline concordancer (Anthony 2020).

3.2.2. The Italian corpus

This section will analyse the corpus of terms and conditions of sale/service sourced from Italian domains and provided by Italian traders or sellers. The terms and conditions are written in English. The analysis will focus on the terms “right of withdrawal”, or “right to withdraw”; “right of cancellation”, or “right to cancel”, and “right of termination”, or “right to terminate”. Collocations and word uses in context will also be addressed.

The term “right of withdrawal” shows 99 occurrences and its use seems in line with the European Directive 2011/83. One document, in fact, establishes as follows:

The customer is entitled to withdraw from the agreement in accordance with Legislative Decree no. 206/05. The **right of withdrawal**, which entitles the customer to return the purchased product and obtain a refund, is only available to individuals who entered into the agreement in their own capacity and not in connection with any business or professional activities. The customer may exercise the **right of withdrawal** within 14 working days of receiving the merchandise or purchasing a voucher without having to provide any reason or pay any penalty.

The paragraph clearly entitles a consumer (i.e., a natural person) to withdraw from the contract within 14 days from the receipt of the goods.

The phrase “right to withdraw” is mentioned 26 times in the Italian corpus and it is generally followed by “the agreement”, “the contract”, or “this distance contract”. For example, the following phrase corroborates the meanings and uses of the “right to withdraw”:

The Customer has the **right to withdraw** from the contract, without giving reasons, within 14 days.

The term “right of cancellation” is mentioned 13 times, but in 4 documents only. In particular, one document defines it as “the right of the purchaser to return a purchased product and be reimbursed for the cost of the same”. Hence, the “right of cancellation” could be compared to a statutory right of withdrawal. The term “right to cancel”, instead, is mostly followed by words such as “order”, or “purchase order”. In one case only is “right to cancel” followed by “contract”. The lemma “cancel” (searched as *cancel** in the corpus) collocates 51 times with “order” within a span of 5 words to the left and to the right. This is particularly evident in phrases such as “order cancellation”; “cancel an/any/the order”; “the order will be automatically cancelled”, and so on.

Also, a clause mentions the “right to withdraw” although its title is “Right to Cancel”:

Right to Cancel. According to the clause 5 of the Legislative Ordinance number 185 of the 22nd of May 1999, the Customer (...) has the **right to withdraw** from the contract and to send back the Products ordered, with no penalty.

As can be seen, the terms “cancel” and “withdraw” seem to be used interchangeably. Hence, their differences in meanings and legal purposes are somehow blurred.

The “right of termination”, instead, is only used once in the whole corpus:

[The Company] may exercise the **right of termination** with immediate effect pursuant to the present article giving notice to the Customer by registered letter with recorded delivery or certified e-mail.

In the phrase above, it is not clear whether the right of termination is comparable to a right of withdrawal or to a remedy in case of breach of contract.

Furthermore, the word “termination” is mentioned in a penalty clause:

Penalty Clause. In the case of **termination** of the contract for breach of the Purchaser, the sums paid by this latter at the time of undersigning the order shall be withheld by way of advance payment for damages sustained.

In this case, “termination” is clearly used as a remedy in case of breach of contract.

If the lemma “terminate” is searched in the corpus (by writing *terminat** in the search field), the following clarifying excerpt comes to the fore:

[The Company] may **terminate** the Contract pursuant to Article 1453 of the Italian Civil Code by sending a notification to the Customer via registered letter with return receipt.

With reference to the quotation above, Article 1453 of the Italian Civil Code provides for the non-performance of a contract. The following extract corroborates it:

In case of fault of the supplier or in the event of delayed delivery (...) the client shall be entitled to: (...) c) **Terminate** the contract with immediate effect.

Therefore, in light of the above, it appears that the words “terminate” and “termination” are mainly related to remedies in case of default or breach of contract.

As far as ancillary contracts are concerned, the corpus mostly refers to “ancillary services” and their price or cost. No ancillary contracts are, hence, tackled in the way the European drafters intended.

Table 5 summarizes the analysis carried out above.

Table 5. “Withdrawal”, “cancellation” and “termination” in Italian law

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate
Italian terms and conditions of sale/service in English	Consumer’s right to have second thoughts and change his/her mind	(1) Mostly referring to “orders” and “purchase orders” rather than “contract” (2) “Ending” a contract in case of withdrawal (very	Redress in case of damage suffered or contract non-performance

		few occurrences)	
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As can be noticed, the term “withdrawal” refers to the possibility for a consumer to end a contract if s/he has second thoughts; the word “cancellation” mostly collocates with “orders” or “purchases”, but in some minor cases it is a synonym of “withdrawal”. The word “termination”, instead, is used to set a contract aside in case of damage suffered by a party.

3.2.3. The Polish corpus

This section will analyse the corpus of terms and conditions of sale/service written in English and sourced from Polish domains. The terms and conditions are issued by Polish traders or sellers. The analysis will focus on the terms “right of withdrawal”, or “right to withdraw”; “right of cancellation”, or “right to cancel”, and “right of termination”, or “right to terminate”. Furthermore, their collocations and the word uses in context will be addressed.

The phrase “right of withdrawal” occurs 20 times. Its usage and meanings seem consistent with the EU drafters' intentions, as the following excerpts clarify:

Right to Withdraw: In accordance with Legislative Decree No. 21 of 21 February 2014, the buyer, who acts for purposes not related to the professional activity (the so-called PRIVATE user), may avail itself of the **right of withdrawal** or rethinking (art 52), returning the product purchased within 14 days of receipt, in full package.

And:

The consumer has a period of fourteen (14) calendar days (hereinafter ‘Withdrawal Period’) to exercise their **right of withdrawal** without having to justify their decision, nor to bear other costs than those provided for in this article.

The term “right to withdraw” is used very frequently in the English versions of Polish terms and conditions of sale/service, as it shows 22 occurrences. However, its meaning seems changed, as it is a form of redress in case of non-performance:

In the event the Buyer refused the delivery of the wares, despite the compliance with the Sales Agreement, [the Company] reserves the **right to withdraw** from the Sales Agreement and charge the Buyer with penalty fees.

The following excerpt corroborates these findings:

The Ordering Party reserves the **right to withdraw** from an unexecuted purchase order in whole or in part within 3 business days, subject to Clause 7 of the GTCP. Furthermore, the Ordering Party reserves the right to seek damages.

As can be noticed, in the above sentence the right to withdraw from the contract is invoked as a form of remedy.

In the corpus, there is no “right of cancellation”, whereas the phrase “right to cancel” is mentioned only 4 times and it mainly refers to orders or bookings. Only in one instance the “right to cancel” collocates with the word “contract”. It is the case of defective products, as explained in the following extract:

Claim for defects. (...) The Purchaser shall have the **right to cancel** the contract, i.e. to demand rescission, if the Seller has allowed a reasonable grace period set by the Purchaser for performing exchange or betterment to elapse to no avail, or if the betterment or the exchange was unsuccessful or was impossible.

In the clause above, invoking a contract “rescission” in case of defective products is erroneous, at least in English-speaking countries adopting a common law system. According to the common law institutions, for example, “rescission” is a redressing action allowed in case of mistakes, errors and misrepresentations. The People’s Law Dictionary, in fact, clearly explains that: “a mistake can entitle one party or both parties to a rescission (cancellation) of the contract” (Hill and Thompson Hill 2002). In the sentence above, the term “cancel (the contract)” cannot be considered a synonym of “rescinding (a contract)”, because no mistake, error or misrepresentation is referred to. However, it could be speculated that such an erroneous use of the term “rescission” might be due to influences from L1.

The term “right of termination” is not present in the corpus. However, the phrase “right to terminate” shows 8 concordances. This is a sample phrase:

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We have the **right to terminate** the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.

From the phrase above, it appears that the contract can be “terminated” by operation of law.

The following extracts (1 and 2), instead, clearly refer to the right of termination as a right to withdraw from the contract:

- (1) Each of the Parties shall have the right to terminate the agreement concluded for an indefinite period of time with one-month’s notice, to be effective as at the end of the calendar month.
- (2) Each of the Parties may terminate this Contract by giving 3 months written notice.

The following excerpt considers “terminate” as a remedy in case of breach of contract:

The **right to terminate** this agreement at an early stage for an important reason remains unaffected. An important reason exists if the customer violates repeatedly against this contract.

Given the examples provided above, it appears that the term “termination” is used inconsistently in Polish terms and conditions of sale/service written in English. This might be due to influences from L1 and/or to the specific legal system.

Finally, the corpus does not provide any particular information or details on ancillary contracts.

Table 6. “Withdrawal”, “cancellation” and “termination” in Polish law

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate
Polish terms and conditions of sale/service in English	(1) Consumer’s right to have second thoughts and change his/her mind (2) Redress in case of damage	(1) Mostly referring to “orders” (2) “Ending” a contract when invoking rescission (in case	(1) Parties’ right to end the contract at their will (2) Redress in case of damage suffered or

	suffered contract performance	or non-	of mistakes)	contract non- performance (3) “Ending” a contract by operation of law
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Table 6 above shows how confusing the use of the terms can be. For example, both “withdrawal” and “termination” are used to end a contract in case of damage suffered by a party. Also, the term “withdrawal” refers to the consumer’s right to end a contract before its natural expiry, and “termination” is invoked to set a contract aside by consent of both parties. The word “cancellation” mostly collocates with “orders”, but it also applies in case of mistakes. Finally, “termination” is also used in order to end a contract by operation of law.

3.2.4. Discussion

In light of the analysis carried out above, it is self-evident that the English versions of Italian terms and conditions of sale/service mostly mirror the nomenclature, use and meanings proposed by EU drafters. For example, the right of “withdrawal” is used to allow customers to have second thoughts and change their minds. Hence, it is granted as a statutory right. The right to terminate a contract, instead, is mostly used in case of non-performance of a contract. Hence, it is granted as a remedy. As regards the term “cancellation”, its meanings and uses appear sometimes non-clear-cut as it is often confused with “withdrawal”. This, however, occurs in the English versions of Italian terms and conditions of sale/service as well as in EU Directives. Moreover, in Italian terms of service/sale written in English, the lemma “cancel” mostly refers to purchase orders.

As for the English versions of Polish terms and conditions of sale/service, it can be stated that the term “right of withdrawal” is used consistently, as it has the same meaning provided for by EU Directives. Nonetheless, some confusion comes to the fore as far as the phrase “right to withdraw” is concerned. If searched in the corpus, in fact, it seems to be used as a form of remedy (hence, it is a

synonym of “right to terminate”). As for “right of cancellation”, the corpus provides no hits, whereas the phrase “right to cancel” shows very few hits, which mostly refer to orders. Hence, differently from the language of EU Directives, no confusion arises between the terms “withdrawal” and “cancellation”. As far as “termination” is concerned, instead, it seems that Polish conditions of sale/service written in English make a varied use of it. As a matter of fact, a contract “termination” is not only invoked when ending it by law, but also in case of breach of the contractual obligations and when exercising the right to withdraw. Therefore, the use of this term seems rather “blurred”.

4. Conclusions

This paper aimed at exploring whether legal terms such as “withdrawal”, “termination” and “cancellation” are used consistently by the EU drafters and by English-speaking drafters addressing off-premises and distance contracts. Furthermore, its purpose was to verify whether consistency is present in the English versions of online terms and conditions of sale/service of non-English speaking sellers or traders.

The paper highlights that there are some inconsistency in the use of the terms across EU Directives. The Directives 97/7 and 2002/65, for example, propose different terminology *vis-à-vis* the more recent Directives 2011/83 and 2019/2161. This is particularly evident when referring to the consumer’s right to “withdraw” from a contract, or when seeking redress.

Such inconsistency is reflected on Member States’ national laws and contracts, especially when English is not a native language. The paper findings highlight that uniformity in the usage, purpose and meanings of the terms is not always accomplished. This occurs in view of the different legal systems of the Member States and owing to influences from a country’s L1. For example, the drafters of English-speaking countries make use of terminology which is not always in line with the one applied by the European drafters. This may be due to an already existing nomenclature which has particular meanings and purposes in a given legal system. For example, the British and Irish

drafters chose the term “cancel” instead of “withdraw” when referring to the right of the consumer to put an end to an off-premises or distance contract because of second thoughts. Other reasons for inconsistency might be due to influences from the first languages of the Member States and/or to an incorrect use of common law terms (see “rescission” in Polish conditions of sale/service, or “repudiation” in an Irish Statute).

Therefore, in light of the above, this paper cannot claim that the terms “withdraw”, “cancel” and “terminate” are used uniformly either in European law or in the law of English-speaking countries. Nor can it argue that consistency characterises the many terms and conditions of sale/service available online. Efforts in making terms and terminology clearer are called for, especially at institutional level.

In practice, this paper highlights that the terms “right of withdrawal”, “right of cancellation” and “right of termination” differ substantially in content and legal purposes. Therefore, they are neither used uniformly in European countries, nor in EU Directives.

The limits of this paper lie in the limited number of countries considered. A larger number of European countries could yield more comprehensive results. However, given the limited space available for this paper, such an option was ruled out.

Further research could investigate whether future Directives make a more consistent use of the legal terminology in question. Moreover, future researchers could carry out comprehensive surveys and verify the English terminology used in online terms and conditions of sale/service of several non-English speaking countries.

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Appendix 1. Overview of terms

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate	Repudiation
EU Directives	Consumer’s right to have second thoughts and change his/her mind (Directives 2011/83 and 2019/2161)	(1) “Ending” a contract in case of withdrawal (Directive 97/7) (2) Redress in case of supplier's failure to comply with national provisions (Directive 2002/65)	(1) Redress in case of damage suffered (Directives 2011/83 and 2019/2161) (2) “Ending” ancillary contracts in case of withdrawal from an off-premises contract (Directive 2011/83)	-
UK Law - Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013	“Withdraw” only refers to (i.e., collocates with) “offers”, not “contracts”.	Consumer’s right to have second thoughts and change his/her mind	“Ending” ancillary contracts in case of cancellation of an off-premises contract	-
Irish Law - European Union (Consumer	-	Consumer’s right to have second thoughts and	“Ending” ancillary contracts in case of	Redress in case of damage suffered

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Information, Cancellation And Other Rights) Regulations 2013		change his/her mind	cancellation of an off-premises contract	
Maltese Law - Subsidiary Legislation 378.17 Consumer Rights Regulations	Consumer’s right to have second thoughts and change his/her mind	-	(1) “Ending” ancillary contracts in case of withdrawal from an off-premises contract (2) Redress in case of damage suffered	-
Italian terms and conditions of sale/service in English	Consumer’s right to have second thoughts and change his/her mind	(1) Mostly referring to “orders” and “purchase orders” rather than “contract” (2) “Ending” a contract in case of withdrawal (very few occurrences)	Redress in case of damage suffered or contract non-performance	-
Polish terms and conditions of sale/service in English	(1) Consumer’s right to have second thoughts and change his/her mind	(1) Mostly referring to “orders” (2) “Ending” a contract	(1) Parties’ right to end the contract at their will (2) Redress in	-

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(2) Redress in case of damage suffered or contract non-performance	when invoking rescission (in case of mistakes)	case of damage suffered or contract non-performance
		(3) "Ending" a contract by operation of law