

The association representing 75,000+ companies selling goods and services online to consumers in Europe.

Executive Summary: New Deal for Consumers (Part I)

Directive on better enforcement and modernization of EU consumer protection rules

Introduction

On 11 April, the European Commission proposed two Directives, which constitute the “New Deal for Consumers”. The Commission’s aim is to ensure better enforcement and modernization of EU consumer protection rules, in particular in light of digital developments. Moreover, it aims to improve tools for stopping illegal practices and facilitating redress for consumers. [The first Directive proposes amendments to four different directives laid out below](#). This executive summary (Part I) covers only these four Directives and gives a brief summary of Ecommerce Europe’s views and concerns regarding some of the proposed adjustments.

1. Unfair Commercial Practices Directive

Framework for penalties

Introducing a system of harmonized EU fines or periodic penalties without proof that the CPC Regulation has not reached its objectives and has not improved overall enforcement would be premature. In accordance with the subsidiarity principle, Member States should be responsible for developing their own enforcement systems and procedures and should be free in the choice of measures they hold for most effective and in the level of fines. Ecommerce Europe is convinced that advising and helping non-compliant enterprises to comply would result in much higher compliance levels than high fines would do. Furthermore, Ecommerce Europe favors a low level maximum fine on a fixed amount rather than a high level maximum fine based on percentage of turnover. In addition, all relevant factors should be taken into consideration in concrete individual cases when determining the level of fines or choice of enforcers to use other measures. Moreover, the list of criteria which administrative authorities or courts shall have to take into account in a uniform way when deciding on whether to impose a penalty and on its level should be a non-exhaustive one. Lastly, Member States should not be let to decide on the allocation of revenue from fines as it could lead to wrong incentives for supervisors (if the fines are a source of their income) to act and to impose fines.

Complaints handling policies

Removing the requirement of traders to inform the consumer on their complaints-handling policy in their offer during the stage of offering and orientation on a product or service is a positive step forward because there is no or hardly any need for consumers to be actively informed on this issue at this stage.

System for remedies for consumers

The proposed contractual and non-contractual remedies (termination of the contract and compensation for losses or damages) for consumers in case of unfair commercial practice are a positive effort towards a harmonized set of rules. However, the proposal does not lead to full harmonization since Member States are free to go beyond the two minimum remedies that have been proposed. Restricting the member states to provide only the two mentioned remedies in their national law system would, in our opinion, provide a uniform, transparent and easily understandable legal framework for both consumers and traders.

2. Consumer Rights Directive

Definitions

Ecommerce Europe generally supports the change of definitions and the addition of new definitions to bring the CRD in line with the Directive on the supply of digital content and to bring platforms within the scope of the CRD. However, Ecommerce Europe strongly recommends that the definitions be in line with the definitive wording of the Digital Content Directive and the Platforms-to-Business Regulation. The CRD should be congruent with the two upcoming EU laws. In addition, Ecommerce Europe supports the alignment of the pre-contractual information requirements in the CRD with the future Digital Content Directive. However, congruence of CRD with the new Digital Content Directive is again strongly advised.

The scope of the CRD

Ecommerce Europe does not support an extension of the scope of the CRD to “free” digital services, without a clear definition of what is meant by “free”. Furthermore, Ecommerce Europe strongly advises the EU legislators to firstly assess the effects of the GDPR on digital services not paid for with money but with personal data and then, if this assessment shows a proven need for further regulation, to do this in alignment with the future Digital Content Directive.

Modern means of communication

Ecommerce Europe welcomes the proposal to allow traders to also offer means of online communication other than telephone or e-mail to their consumers. This will allow traders to use current modern online communication methods and, at the same time, it will also cover future means of online communication.

Transparency

As the proposal on Article 6a CRD leaves too many open questions, Ecommerce Europe strongly suggests reconsidering Article 6a in order to bring more balance in the information obligations and to give more clarity and guidance on the consequences of non-compliance with the proposed information obligations. For example, marketplaces should not be forced to disclose trade secrets when disclosing ranking criteria. The Commission’s proposal establishes that platforms can rely on a self-declaration from the user in order to determine if the seller is a trader or not. Ecommerce Europe supports this approach, because obliging the platforms to perform screenings by themselves to determine whether seller is a trader or not would be practically impossible and burdensome. The Proposal, however, does not provide for such a self-declaration mechanism for the applicable law and for the question on which subject is liable for the performance of contract. That is why Ecommerce Europe recommends introducing a self-declaration mechanism also in this context. In addition, Ecommerce Europe suggests that general mandatory information, which is equal for all traders, could be provided for by the platform, while specific mandatory traders information should be given to the consumer by the trader.

Pre-contractual information requirements

Ecommerce Europe welcomes the proposal to limit the information requirements and the sending of the model withdrawal form when using means of distance communication to conclude the contract, which allow only limited space or time for the provision of this information.

Right of withdrawal for goods

Ecommerce Europe does not question the consumers’ right of withdrawal. However, the current provision specifying that the consumer is allowed to withdraw from the contract even after the goods have been used more than what is allowed in an offline store is, in practice, a real burden for online shops and created a high level of uncertainty for both the consumer and the trader. Ecommerce Europe believes that the proposed changes in Article 2(9)(3) will have an overall positive impact on the exercise of the right to withdraw for consumers while avoiding disproportionate burdens on the trader. Ecommerce Europe fully supports the basic rule that the consumer should only handle and inspect the goods in the same manner that he would be allowed to do in an offline shop. In addition, the current Article 14.2 CRD on liability for diminished value needs to be reconsidered to ensure alignment with the new provision in Article 16(n).

Reimbursement to the consumer

Ecommerce Europe fully supports the proposed removal of the duty for traders to reimburse consumers in case of withdrawal before the reception of the returned good, which is a real burden especially for SMEs. This proposal will allow traders to better mitigate the risk of financial loss, by avoiding reimbursing consumers while not being sure that they will receive the returned good. It will also allow them to refuse reimbursement when an assessment of the returned good clearly shows that a consumer used it more than what is allowed in an offline shop.

Right of withdrawal for service contracts and contracts for the supply of digital content

Ecommerce Europe welcomes the proposal to remove the trader's obligation to ask for the consumer's acknowledgement that he loses his right of withdrawal once the service is fully performed, if the performance has begun with the consumer's prior consent. Ecommerce Europe also welcomes the proposal to exempt traders from obtaining consent before starting to deliver unpaid services to consumers.

Penalties and fines

Please refer to the **Framework for penalties** section above, under the **Unfair Commercial Practices Directive**.

3. Unfair Contract Terms Directive

4. Price Indication Directive

Penalties and fines

Please refer to the **Framework for penalties** section above, under the **Unfair Commercial Practices Directive**.



Ecommerce Europe Position Paper:
[Policy recommendations - New Deal for Consumers Package \(Part I\)](#)