

Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive		Procedure completed	
EU consumer protection rules: enforcement and modernisation Amending Directive 98/6/EC 1995/0148(COD) Amending Directive 2005/29/EC 2003/0134(COD) Amending Directive 2011/83/EU 2008/0196(COD)			
Subject 4.60.06 Consumers' economic and legal interests			
Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Internal Market and Consumer Protection		16/05/2018
		 DALTON Daniel	
		Shadow rapporteur	
		 ARIMONT Pascal	
		 GEBHARDT Evelyne	
		 SELIMOVIC Jasenko	
		 REDA Felix	
		 ZULLO Marco	
		 PRETZELL Marcus	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	 Economic and Monetary Affairs	The committee decided not to give an opinion.	
	 Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	 Legal Affairs	The committee decided not to give an opinion.	
European Commission	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3725	08/11/2019
European Commission	Commission DG	Commissioner	
	Justice and Consumers	JOUROVÁ Věra	

Key events			
11/04/2018	Legislative proposal published	COM(2018)0185	Summary
02/05/2018	Committee referral announced in Parliament, 1st reading		
22/01/2019	Vote in committee, 1st reading		
22/01/2019	Committee decision to open interinstitutional negotiations with report adopted in committee		
28/01/2019	Committee report tabled for plenary, 1st reading	A8-0029/2019	Summary
30/01/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
11/02/2019	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
02/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE638.479 GEDA/A/(2019)003440	
16/04/2019	Debate in Parliament		
17/04/2019	Results of vote in Parliament		
17/04/2019	Decision by Parliament, 1st reading	T8-0399/2019	Summary
08/11/2019	Act adopted by Council after Parliament's 1st reading		
25/11/2019	End of procedure in Parliament		
27/11/2019	Final act signed		
18/12/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2018/0090(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 98/6/EC 1995/0148(COD) Amending Directive 2005/29/EC 2003/0134(COD) Amending Directive 2011/83/EU 2008/0196(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed

Documentation gateway

Legislative proposal	COM(2018)0185	11/04/2018	EC	Summary
Document attached to the procedure	SWD(2018)0096	13/04/2018	EC	
Document attached to the procedure	SWD(2018)0098	13/04/2018	EC	
Committee draft report	PE625.551	19/07/2018	EP	
Economic and Social Committee: opinion, report	CES2126/2018	19/09/2018	ESC	
Document attached to the procedure	N8-0015/2019 OJ C 432 30.11.2018, p. 0017	05/10/2018	EDPS	Summary
Committee of the Regions: opinion	CDR2839/2018	10/10/2018	CofR	
Amendments tabled in committee	PE627.947	29/10/2018	EP	
Amendments tabled in committee	PE628.418	29/10/2018	EP	
Committee report tabled for plenary, 1st reading/single reading	A8-0029/2019	28/01/2019	EP	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)003440	29/03/2019	CSL	
Text agreed during interinstitutional negotiations	PE638.479	29/03/2019	EP	
Text adopted by Parliament, 1st reading/single reading	T8-0399/2019	17/04/2019	EP	Summary
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	EC	
Draft final act	00083/2019/LEX	27/11/2019	CSL	

Additional information

Research document

[Briefing](#)

Final act

[Directive 2019/2161](#)[OJ L 328 18.12.2019, p. 0007](#) Summary

EU consumer protection rules: enforcement and modernisation

PURPOSE: to ensure better enforcement modernise EU consumer protection rules, in particular in the light of the developments in the digital economy.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the assessment of EU consumer protection rules and recent cross-border infringements of EU consumer law, in particular the "Dieselgate" scandal, have shown that there is still room for improvement to strengthen consumer protection.

In order to strengthen the application of European consumer law in the face of the increasing risk of infringements at European level, this proposal introduces targeted amendments to four consumer rights directives, namely (i) [Directive 2005/29/EC](#) on unfair commercial practices; (ii) [Directive 2011/83/EU](#) on consumer rights; (iii) [Directive 93/13/EEC](#) on unfair contract terms and (iv) [Directive 98/6/EC](#) on the price indication.

This proposal is presented together with a [proposal on representative actions](#) for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC.

IMPACT ASSESSMENT: the preferred option combines: (i) increasing deterrence and proportionality of public enforcement through stronger rules on penalties and a more effective injunctions procedure; (ii) the consumers right to individual remedies.

CONTENT: this proposal amends the existing EU consumer protection rules as follows:

(1) Amendments to Directive 2005/29/EC (unfair commercial practices):

- Individual remedies: the proposal provides that consumers will have the right to bring individual remedies if they are harmed by unfair commercial practices, such as aggressive marketing. Member States shall provide for contractual and non-contractual remedies. At a minimum, contractual remedies shall include the right to terminate the contract. Non-contractual remedies shall, as a minimum, include the right to compensation for damages.
- Penalties: a list of common, non-exhaustive criteria for assessing the gravity of infringements (except for minor ones) is introduced in the proposed Directive. Enforcement authorities would be required to take these criteria into account when deciding whether to impose penalties and on their level. If the penalty to be imposed is a fine, the authority would be required to take into account, when setting the amount of the fine, the infringing traders turnover, net profit as well as any fines imposed for the same infringement in other Member States. In addition, for 'widespread infringements' and 'widespread infringements with a Union dimension', Member States will be required to provide in their national law for fines the maximum amount if which should be at least 4% of the infringing traders turnover in the Member State or Member States concerned.
- Hidden advertising: today, paid placements (where third parties pay for higher ranking) and paid inclusions (where third parties pay to be included in the list of search results) are often not indicated at all, or are only indicated in an ambiguous way not clearly visible to consumers using digital applications such as online marketplaces or comparison tools. It is proposed to clarify the provisions on the prohibition of hidden advertising to clarify that online platforms must indicate search results containing paid placements (or paid inclusions).
- Off-premises sales: the proposal stipulates that Directive 2005/29/EC authorises Member States to adopt provisions to protect the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices in the context of unsolicited visits by a trader to a consumer's home (in other words, visits which are not made at the request of the consumer, for example, through fixing an appointment with the trader) and with regard to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers, where such restrictions are justified on grounds of public policy or the protection of the respect for private life.
- Dual quality products: the proposal amends Directive 2005/29/EC by clarifying that a commercial practice involving the marketing of a product as being identical to the same product marketed in several other Member States, where those products have significantly different composition or characteristics causing or likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, is a misleading commercial practice which competent authorities should assess and address on a case by case basis according to the provisions of the Directive.

(2) Amendments to Directive 2011/83/EU (consumer rights): the proposed amendments aim to:

- extend the application of Directive 2011/83/EU to digital services for which consumers do not pay money but provide personal data, such as: cloud storage, social media and e-mail accounts. Given the increasing economic value of personal data, those services cannot be regarded as simply free. Consumers should therefore have the same right to pre-contractual information and to cancel the contract within a 14-day right-of-withdrawal period, regardless of whether they pay for the service with money or provide personal data;
- introduce more transparency for consumers on online marketplaces: today, consumers do not always know how the offers presented to them on an online market place have been classified or from whom they buy (a professional or another consumer). The proposal introduces additional information requirements in Directive 2011/83/EU, which require online marketplaces to clearly inform consumers about: (i) the main parameters determining ranking of the different offers, (ii) whether the contract is concluded with a trader or an individual, (iii) whether consumer protection legislation applies and (iv) which trader (third party supplier or online marketplace) is responsible for ensuring consumer rights related to the contract (such as the right of withdrawal or legal guarantee);
- remove unnecessary burdens for businesses, including by lifting obligations on companies as regards the consumer's withdrawal right. For instance, consumers will no longer be allowed to return products that they have already used instead of merely trying them out, and traders will no longer have to reimburse the consumers before actually receiving the returned goods.

The other two Directives (Directive 93/13/EEC on unfair terms in contracts and Directive 98/6/EC on the price indications) would only be amended as regards penalties.

EU consumer protection rules: enforcement and modernisation

The Committee on the Internal Market and Consumer Protection adopted the report by Daniel DALTON (EPP, UK) on the proposal for a directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Transparency requirements for online marketplaces

Where an online marketplace or comparison service provides access to consumer reviews of products, the following information shall be regarded as material: (a) a description of the processes used to solicit and present consumers reviews and whether the authenticity of those reviews is checked; and (b) where such checks take place, a description of the main characteristics of the check. Consumers should also know whether the third party offering the goods and services is a trader or not.

When providing consumers with the possibility to search for products on the basis of a query in the form of a keyword, phrase or other input, online marketplaces and comparison services shall provide information on the main parameters, presented in order of relative importance, determining the ranking of offers presented to the consumer as result of his search query.

Members called for specific information on price reductions (in the case of travel, for example) to be included in the search results of online marketplaces. Online marketplaces should also, where appropriate, indicate the official classification of a product or service (e.g. the star rating system for hotels in the tourism sector).

In addition, online marketplaces realising that a given offer, product or service on their platform is illegal, should inform consumers about the potential illegality of the offer, product or service they have bought. Such an obligation would offer better protection to consumers, through increased transparency.

Online marketplace operators shall be obliged to take reasonable steps to ensure that the services they provide are not subject to misuse, leaving consumers vulnerable.

Misleading practices

Members proposed adding to Annex I of Directive 2005/29/EC (commercial practices deemed unfair in all circumstances) certain misleading practices such as the following:

- provide, following an online request, information to promote a product when the trader has directly or indirectly financed the promotion or prominent placement bypassing the main body of search results without making that clear to the consumer;
- stating or otherwise creating the impression that a review of a product is submitted by a consumer who has actually used the product without taking reasonable and proportionate steps to ensure that that review reflects real consumers experiences;
- stating or otherwise creating the impression by its appearance, description or pictorial representation that a good is identical or seemingly identical to another good marketed in another Member State when it is not, unless those goods differ on account of clear and demonstrable regional consumer preferences, the sourcing of local ingredients or requirements of national law, while this distinction is clear and comprehensively marked so as to be immediately visible to the consumer;
- creating the false impression that other consumers purchased, used or recommended a specific product, service or digital content based on unrelated parameters.

Termination of contracts and right of withdrawal

Contractual remedies shall include the possibility for the consumer to unilaterally terminate the contract. Members suggested that additional contractual remedies which reflect the nature and gravity of the noncompliance shall also be provided, including the right to obtain a price reduction or the right to obtain compensation for damage.

Members also rejected the Commission's proposal to reduce consumer rights to property restitution. They have reintroduced the right of withdrawal, which allows goods purchased online to be returned for a period of 14 days.

Penalties

In the case of a widespread infringement or widespread infringements at Union level, Member States should set, in their national law, the maximum amount of the fine for such infringements at a level corresponding either to EUR 10 million or to at least 4 % of the trader's annual turnover of the previous financial year in the Member State concerned, whichever is the higher.

The revenue from fines should be used to enhance the protection of the general interest of consumers, in particular by setting up a fund dedicated to providing redress in cases of harm suffered by consumers.

European Consumer Rights mobile application

By 1 January 2021, the Commission shall develop a mobile application to serve as a point of entry for citizens seeking information on their consumer rights and for consumers seeking out-of-court resolution of disputes covered by Regulation (EU) No 524/2013 and support in complaints through the European Consumer Centres Network.

The mobile application shall have the following functions: (a) to provide a model electronic complaint form which can be filled in by the consumer; (b) to submit the completed complaint form to the ODR platform established under Regulation (EU) No 524/2013 or to the competent European Consumer Centre, based upon the parties involved; (c) to provide accurate and up-to-date information in a clear, understandable and easily accessible way on consumer rights and guarantees related to buying goods and services.

EU consumer protection rules: enforcement and modernisation

The European Parliament adopted by 474 votes to 163, with 14 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Transparency requirements for online marketplaces

The amending Directive shall introduce more transparency for consumers in online marketplaces, in particular as regards the use of online notices, personalised pricing based on algorithms or the higher rating of certain products through paid advertisements.

Where comparison services allow consumers to search for products based on a query consisting of a keyword, sentence or other data entry, they should provide information on the main parameters, in order of importance, that determine the ranking of offers made to the consumer in response to the search request. This information should be succinct and made easily, prominently and directly available.

In addition, online marketplaces shall be required to inform consumers whether the third party offering goods, services or digital content is a trader or non-trader, on the basis of a declaration by the third party to the online marketplace.

Where a trader provides access to consumer opinions on products, information to establish whether and how the trader ensures that the published opinions are from consumers who have purchased or used the product shall be deemed substantial.

The text also clarifies consumer protection for 'free' digital services where consumers do not pay money but provide personal data, such as cloud storage, social media and e-mail accounts.

Unfair practices

The amended text adds to Annex I of Directive 2005/29/EC (concerning unfair business-to-consumer commercial practices in the internal market) certain misleading practices such as the following:

- reselling events tickets to consumers if the trader acquired them by using automated means to circumvent any imposed limit on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets;
- stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers;
- submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products

Repair and maintenance

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

The amending Directive introduces an individual right of redress for consumers when they are harmed by unfair commercial practices, such as aggressive marketing, provided that such remedies are proportionate, effective and do not affect the application of other remedies available to consumers under EU or national law.

Member States may therefore adopt rules under which the 14-day withdrawal period shall be extended to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the purpose or effect of promoting or selling products to consumers.

Sanctions

In the case of a major infringement or EU-wide infringements, the maximum amount of the fine shall be 4% of the traders annual turnover in all the Member States concerned or a flat-rate amount of EUR 2 million in cases where information on its turnover is not available.

The amended text also includes a review clause requiring the European Commission to assess the situation within two years in order to examine whether the double level of product quality (i.e. cases where goods are presented on the market as identical when they have a significantly different composition or characteristics) needs to be added to the black list of unfair commercial practices.

EU consumer protection rules: enforcement and modernisation

PURPOSE: to modernise EU consumer protection law.

LEGISLATIVE ACT: Directive (EU) 2019/2161 of the European Parliament and of the Council amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

CONTENT: the Directive amends [Directive 2005/29/EC](#) on unfair commercial practices, [Directive 2011/83/EU](#) on consumer rights, Directive 93/13/EEC on unfair terms in consumer contracts and Directive 98/6/EC on indication of prices. It is part of the "New Deal for Consumers" launched by the Commission in 2017.

Penalties for infringements

The Directive introduces further harmonisation and simplification of some of the criteria for determining the level of penalties to be imposed for infringements of EU consumer protection legislation.

In the case of a major infringement or major EU-wide infringements, the maximum fine shall be 4% of the traders annual turnover in all Member States concerned or a lump sum of EUR 2 million in cases where information on the trader's turnover is not available.

Compensation, reparation, redress

Consumers shall claim compensation for the damage suffered and, where appropriate, a price reduction or the termination of the contract, in a proportionate and effective manner. Member States may maintain or introduce rights to other redress, such as repair or replacement, for consumers who have been harmed by unfair commercial practices.

The Directive also introduces an individual right of redress for consumers when they are harmed by unfair commercial practices, such as aggressive marketing, provided that these remedies are proportionate, effective and do not affect the application of other remedies available to consumers under EU or national law.

Member States shall adopt rules under which the 14-day withdrawal period shall be extended to 30 days for contracts concluded for example in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader for the purpose of selling products to consumers.

Transparency requirements for online marketplaces

The Directive imposes greater transparency in online transactions, in particular as regards the use of online notices, personalised pricing based on algorithms, or the higher ranking of certain products through paid advertising.

The Directive thus provides for:

- the obligation for comparison services which allow consumers to search for products on the basis of a keyword query or other data entry, to provide information on the main parameters, presented in order of importance, which determine the ranking of the offers presented to the consumer in response to his search query;

- the obligation for online marketplaces to inform consumers whether the trader responsible for the transaction is the seller and/or the online marketplace itself.

Certain misleading practices, such as those consisting of:

- providing search results in response to a consumer's online search request without clearly informing the consumer of any paid advertising or payment made specifically to obtain a higher ranking of products in the search results;

- claiming that product reviews are sent by consumers who have actually used or purchased the product, without taking reasonable and proportionate steps to verify that they are actually from such consumers;

- sending or instructing another legal or natural person to send false customer reviews or recommendations.

The Directive also clarifies consumer protection in relation to "free" digital services where consumers do not pay money but provide personal data, such as cloud storage, social networks and e-mail accounts.

Price reduction

The Directive requires clear information to be given to consumers in the event of a price reduction. Any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction. The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction. Member States may provide for different rules for goods which are liable to deteriorate or expire rapidly.

Dual-quality products

The Directive introduces clarifications as to how misleading commercial practices concerning "dual-quality" products (i.e. cases where goods are presented on the market as identical when they have a significantly different composition or characteristics).

The European Commission shall assess the situation by 28 May 2024 in order to consider whether dual-quality products need to be added to the black list of unfair commercial practices.

ENTRY INTO FORCE: 7.1.2020.

TRANSPOSITION: no later than 28.11.2021.

APPLICATION: from 28.5.2022.