

EU consumer protection rules: enforcement and modernisation

2018/0090(COD) - 11/04/2018 - Legislative proposal

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 consumer's 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 trader's 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 of which should be **at least 4% of the infringing trader's 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.