



EU New Deal for Consumers

**Unit E2 'Consumer & Marketing Law'
DG Justice and Consumers
European Commission**

New Deal for Consumers: origins

- 2017 Fitness Check and evaluation of Directive 2011/83/EU:
 - ✓ Substantive EU consumer rules remain overall fit for purpose but must be better enforced and modernized
 - ✓ Injunctions Directive not effective enough (too costly, lengthy and complex); minimal impact on consumer redress
- 2018 Commission Report on the 2013 Recommendation on collective redress:
 - ✓ Limited impact on MS; 9 countries still have nothing

Two legislative proposals

'Omnibus' proposal
amending 4 EU Directives

Proposal on
representative actions
replacing the Injunctions
Directive

Representative actions proposal

Complements the CPC and ADR/ODR, builds on current Injunctions Directive 2009/22/EC enabling actions by 'qualified entities' on behalf of consumers

Enlarges the scope to cover rights under other (sector specific) EU instruments and adds redress

Leaves Member States the choice to integrate it in their systems or to transpose it as an alternative system

Balances access to justice and safeguards

Qualified entities

- Criteria:
 - (a) Properly **constituted** under national law
 - (b) **Legitimate interest** in ensuring compliance with EU instrument
 - (c) **Non-profit**
- Designated **in advance** and placed in a list (also regulatory choice for Member States to designate ad hoc for a particular action)
- Cross-border **mutual recognition** of the legal standing of qualified entities that are on the list
- **Monitoring** obligation for MS

Representative actions

- Qualified entity can launch a representative action for:
 - an **injunction order** as an interim or definitive measure (establishing the infringement)
 - **redress measures**: compensation, repair, replacement, contract termination...)
- Redress actions must be based on a **final decision** establishing an infringement
- Choice for Member States regarding **opt-in/opt-out**
- **Settlements** encouraged (need approval of court/authority)
- Full transparency about the source of **funding**

Other features

- Consumers must be **informed** about the final outcomes of the action at the trader's expense
- **Effects** of final decisions establishing an infringement:
 - *irrefutable evidence* that the infringement has occurred in redress actions within the same Member State (domestic)
 - *rebuttable presumption* that the infringement has occurred in other Member States (cross-border)
- Possibility to request **evidence** from the trader
- Member States must ensure overall **procedural expediency**
- Possible **joint cross-border action** brought by several qualified entities
- **Assistance** for qualified entities from Member States and the Commission

'Omnibus' proposal - Overview

Better enforcement

- Stronger penalties
- UCPD individual remedies

Modernisation

- Online marketplaces
- 'Free' digital services

Burden reduction

- Right of Withdrawal
- Overlapping information requirements
- Means of communication

Other

- 'Dual quality' of products
- Doorstep sales & commercial excursions
- Hidden advertising in search results

Better enforcement

Further harmonization of the rules on penalties

- Extending the existing rule in UCPD, CRD, PID; adding penalties to UCTD
- Common non-exhaustive criteria
- Harmonised maximum fine for “widespread infringements” subject to a coordinated enforcement action (CPC Regulation 2017/2394) – not less than 4% of trader’s annual turnover

Right to remedies in the UCPD

- Requirement to make contractual and non-contractual remedies available, including:
 - Contract termination
 - Compensation for damages

Modernisation

Transparency on online marketplaces

- Main parameters for ranking of offers
- Status (trader or non-trader) of third party suppliers
- Information whether EU consumer rights apply to the contract
- Information about who is responsible for the performance of the contract and compliance with consumer rights

Extension of the CRD to «free» digital services

- Pre-contractual information
- 14-day right of withdrawal
- Consistency with the GDPR and future “Digital Content” Directive

Burden reduction for businesses

Right of Withdrawal

- Exemption from the Right of Withdrawal for “used goods”
- Traders no longer obliged to reimburse the consumer before receiving back the returned goods

Simplification of information requirements

- “Complaint handling policy” removed from the information requirements of the UCPD
- Model withdrawal form can be provided by other means when contracts concluded by e.g. telephone or SMS

Means of Communication

- Reference to “fax” removed
- Other online means of communication as alternative to “e-mail”

Other amendments

Off-premises selling

- Member States can adopt national rules on unsolicited doorstep selling and commercial excursions
- If justified on grounds of public policy or protection of private life
- Subject to transparency procedure

Misleading marketing of 'dual quality' products

- Marketing a product as being identical to the same product in other countries
- When there are significant differences in composition or characteristics
- Can be a misleading practice subject to case-by-case assessment

Hidden advertising in search results

- Clarification of No. 11 of the UCPD blacklist on hidden advertising in editorial content – it applies also to search results, which should clearly indicate cases of "paid placement" and "paid inclusion"



Citizens' Dialogues

The New Deal for Consumers

Sofia – 2 May

Luxembourg – 18 May

Copenhagen – 31 May

Helsinki - 1 June

Stockholm – 1 June

Valetta – 6 June

Lisbon – 15 June

Prague – 19 June

Berlin – 25 June

Budapest – 19 July

Vilnius – 30 August

Riga – 30 August

Tallinn – 31 August

Athens – 13 September

Nicosia – 14 September

Dublin – 19 September

Vienna – 25 September

Madrid – 1 October

Rome – 4 October

The Hague – 8 October

Warsaw – 18 October

Ljubljana – 8 November

Zagreb – 9 November

Brussels – 12 November

Bucharest – 20 November

Bratislava – 21 November

Paris – 22 November

Citizens' Dialogues

The New Deal for Consumers

Les Assises des Consommateurs
28 November, Brussels



Questions?

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