



May 2018

▣ Proposals for a New Deal for Consumers

On 11 April 2018 the European Commission published two directive proposals as part of the Commission's 'New Deal for Consumers' ("**New Deal**"). The New Deal is an initiative to ensure European consumers are benefiting from their rights granted under European Union law.

The inadequacy of the current regime was brought to light in the 'Dieselgate' scandal and in two reports - REFIT Fitness Check of EU Consumer and Marketing law ("**Fitness Check**") and Consumer Rights Directive evaluation ("**CRD Evaluation**") – which were published in May 2017 following an extensive evaluation conducted on existing consumer rules. The two new proposals are based on the recommendations made in the Fitness Check and CRD Evaluation and propose to build on the current legislative framework by amending existing Directives.

Proposal 1

The first proposal is for a "*Directive on better enforcement and modernization of EU consumer protection rules*" ("**Proposal 1**"). It will revise four existing directives principally. The Unfair Contract Terms Directive (93/13/EEC) and the Consumer Price Indications Directive (98/6/EC).

The Unfair Commercial Practices Directive (2005/29/EC) and the Consumer Rights Directive (2011/83/EU) will also be amended but solely in relation to the penalties.

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Proposal 1 sets out to establish amongst other things:

- effective, proportionate and dissuasive penalties for widespread cross-border infringements;
- individual remedies for consumers who have been harmed by unfair commercial practices such as aggressive marketing;
- disclosure of third-party suppliers in online marketplaces as they may cause identifying the vendor difficult, thereby misleading the consumer;
- search results on online platforms requiring indications of “paid placements” (i.e. where a search result does not show the most relevant item but items that have paid to show up as a result thereby potentially misleading the consumer);
- 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 have not taken otherwise, is a misleading commercial practice (misleading “dual quality” marketing);
- extending protection of consumers rights in respect of digital services where the consumer does not pay money for the service but rather provides personal data (e.g. cloud storage, social media websites, e-mail accounts).

Proposal 2

The second proposal is for “a *Directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC*” (“**Proposal 2**”). It fine tunes Directive 2009/22/EC (“**Injunctions Directive**”) which introduced the ability of qualified entities to bring representative actions on behalf of consumers but was criticised in the Fitness Check, along with other reports for being too limited in scope, for its procedures being too costly and lengthy and having a limited effect on harmed consumers.

The need for consumers to be able to bring representative actions was described by Věra Jourová, the Commissioner for Consumers, as a mechanism to “level the odds” between global “big companies” and “individual consumers” since the former are currently operating at a huge advantage.

Proposal 2 sets about remedying these shortcomings by introducing amongst other things:

- stronger sanctions where there have been consumer law infringements linked to the company’s annual turnover to ensure it is not “cheap to cheat”;

- rules enabling “qualified entities” to seek representative actions aimed at the collective interests of consumers;
- efficiency of procedure;
- facilitating redress for consumers who are victims of such infringements by mechanisms such as requiring traders found in judicial proceedings to have breached consumer rights to inform consumers affected by such breaches and explaining to them how to benefit from redress.

Importantly Proposal 2 contains safeguards to prevent the abuse of process by, amongst other things, only allowing “qualified entities” such as consumer organisations as defined in the proposal to launch actions, and requiring such entities to have strict obligations of transparency regarding the source of their funding.

As the Commission’s Press Release says *“This model has strong safeguards and is distinctly different from US-style class actions. Representative actions will not be open to law firms, but only to entities such as consumer organisations that are non-profit and fulfil strict eligibility criteria, monitored by a public authority. This new system will make sure European consumers can fully benefit from their rights and can obtain compensation, while avoiding the risk of abusive or unmerited litigation.”*

Further information on the proposals can be found at [Proposal 1](#) and [Proposal 2](#).

For further guidance regarding the New Deal for Consumers, please refer to the contacts above, or to your usual contact within Dillon Eustace.

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