

New deal for consumers

Odette Vella
Director Information, Education and Research
Office for Consumer Affairs
MCCAA

27 March 2018

Fitness Check

Main Conclusions

EU consumer laws still fit for purpose if effectively enforced and applied.

Existing rules adequately tackle the problems that European consumers face even on online markets.

Fitness Check

Areas for Improvement

- Improve Awareness (both consumers and traders)
- Step up Enforcement
- Targeted amendments of consumer law directives
- Revision of the Injunctions Directive



New Deal for Consumers

What is being proposed?

Targeted Amendments

- More transparency for contracts concluded on online marketplaces
- Better protection for consumers who purchase “free” digital services
- EU wide rights for consumers who are harmed by Unfair Commercial Practices
- More effective and dissuasive financial penalties for breaches of consumer laws
- Simplify rules on pre-contractual information and right of withdrawal

Transparency of online marketplaces

Current Situation

Consumers not always informed on who they are buying from:

marketplace itself or third party suppliers?

Third party supplier - trader or individual?

Does consumer law apply to contract of sale?
(Two year legal guarantee/cooling off period)



Transparency of online marketplaces

Planned Changes

Proposed Amendments to the Consumer Rights Directive to require online marketplaces to clearly indicate to consumers the following:

- Whether contracting party is a trader
- Whether consumer law applies to sales transaction (legal guarantee/cooling off period)
- Contact details of trader must always be provided - in case of a claim or decision to cancel sale

“Free” Digital Services

Current Situation

No pre-contractual information to consumers who subscribe to ‘free’ digital services.

No legal obligation:

- to provide information about interoperability of service with hardware and software
- to provide information about duration of contract

Lack of coherence:

- Consumer Rights Directive provisions apply to ‘free’ digital content but not to ‘free’ digital services
- Proposed Digital Content Directive provides remedies for both ‘free’ content and ‘free’ services.

“Free” Digital Services

Planned Changes

Extend scope of Consumer Rights Directive to include “free” digital services. Thus pre-contractual transparency and the right to terminate contract within 14 days would apply.

Align Consumer Rights Directive to the definitions of the future Digital Content Directive.



Unfair Commercial Practices Remedies

Current Situation

Consumers have the following possible remedies when they fall victims to Unfair Commercial Practices:

- Take the trader to the Civil Courts and seek damages
- The right to terminate contract and get a refund

Unfair Commercial Practices Remedies

Planned Changes

Amendment of Unfair Commercial Practices Directive:

Require Member States to introduce under national law a right to contractual and extra contractual remedies for consumers harmed by Unfair Commercial Practices

Financial Penalties

Current Situation

Divergent maximum penalties

Same breach = different economic impact in different Member States.

Current Penalties do not take into consideration the fact that a breach of consumer law has taken place in more than one Member State.



Financial Penalties

Planned Changes

- Turn-over based penalties.

But which turn-over should be taken into account for the calculation of the fine?

- Worldwide?
 - EU Wide?
 - National?
 - Product Specific?
-
- Common criteria for the imposition of penalties.

Overlapping Information Requirements

Current Situation

Fitness Check revealed that at advertising stage some of the information requirements are less relevant for consumers, e.g. information on complaint handling.

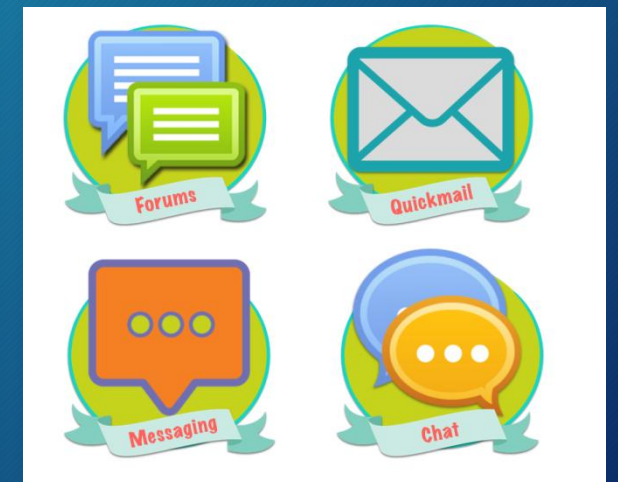
Traders currently also face unnecessary burden due to the restricted means of communication which they have to make available to consumers to communicate with them.

Overlapping Information Requirements

Proposed Changes

Remove information about the complaint handling policy from the information to be given in invitation to purchase.

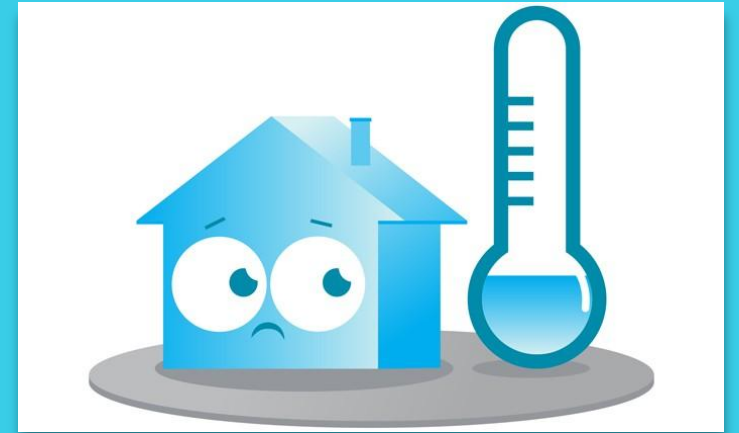
Allow more technologically advanced means of distance communication which preserve the consumer's right to quickly and efficiently contact the trader while keeping tangible proof of such communication



Right of Withdrawal

Current Problems

- Duty to accept returned products used more than necessary
- Duty to reimburse consumers without first being able to inspect returned goods



Right of Withdrawal

Proposed Changes

- To remove the right of consumers to withdraw when goods have been used more than allowed to check and test them.
- To remove the duty of traders to reimburse consumers before having received the goods back.

Main objectives of targeted amendments

- Increase consumer trust and empowerment.
- Promote the Internal Market.
- Simplify, streamline and modernise EU consumer rules.

Thus achieving future proof EU rules and reduce administrative burden and costs for traders.



Revision of 2009 Injunctions Directive

Revision Objectives

- To fully exploit the potential of injunctions by addressing the main problems faced by consumers in obtaining redress.
- To diminish significant disparities among Member States in the level of the use of the injunctions procedure and its effectiveness.
- To include Collective Redress in the provisions of this Directive.

Injunctions Directive

Current Problems

- Diverging/inadequate solutions for collective injunctions and redress in Member States
- Inefficient and unequal enforcement of EU rules

Hence:

- EU consumers are not protected equally but their protection depends on the country where they reside. This results in economic loss for consumers.
- Rogue traders are not consistently and equally deterred across the EU. Compliant traders do not enjoy an EU-wide level playing field.

Injunctions Directive

Proposed Revisions

- Enlarge the scope of Injunctions Directive
- Complement action for injunctions with compensatory collective redress
- Ensure the presence, across the EU, of a collective redress mechanism as representative action by qualified entities



Injunctions Directive

Proposed Revisions

- Promote out-of-court collective redress settlements
- Ensure wide publicity of the injunctions/redress orders and approved settlements
- Facilitate follow-on damages actions

Revision of Injunctions Directive

Expected Impact

Deters future infringements and hence ensures greater compliance with EU rules.

Harmonised procedures lead to more equal treatment of affected consumers in a similar situation in all Member States.

Member States who do not have any compensatory collective redress scheme will need to set one up.

Thank You for your attention!!

Questions??



Odette Vella
Office for Consumer Affairs
MCCAA

Email: odette.vella@mccaa.org.mt

Tel: 23952736