



EU Consumer rights

Adapting to multi-channel markets

June 2017

BRUNSWICK



What's next for EU Consumer Law?

EU policy-makers want to ensure consumers are equally protected whether they buy on or offline.

They are expected to propose changes to existing EU consumer protection laws by the end of 2017.

EU Consumer and marketing rules fit for purpose... almost

After a two-year evaluation, EU regulators have concluded that existing consumer and marketing laws must be applied more effectively, communicated better and adapted to ensure that consumers continue to be equally protected in the emerging multi-channel marketplace.

In their Report issued on 29 May, regulators point to discrepancies between consumer protection online and offline. They argue that this is also being compounded by the convergence of consumers and traders in the developing gig economy.

In response, they have committed to proposing guidance and considering changes to existing laws before the end of 2017.

It's all about transparency

Regulators will be aiming to increase transparency and clarity for consumers.

Requirements for providers of free digital services:

Providers of 'free' digital services, such as Dropbox and Gmail, could soon be required to inform users in advance about the key features of their services and interoperability with other providers.

Users would also be explicitly granted the right to withdraw their registration without justification within 14 days from the conclusion of a contract. This already applies to other digital and offline services.

Extending existing requirements to services such as cloud storage and webmail services would come on top of other rules currently under discussion that would force providers to hand back data on the cancellation of a contract.

Ranking offers and search results:

Regulators have for some time shown a strong interest in the methods used to rank search results. More recently they have worked with industry to ensure transparency of comparison sites.

Future EU rules are expected to require businesses to better inform consumers on the criteria used for ranking services and offers as a matter of fair practice.

Better enforcement

Business awareness of current legislation remains low, leading to low levels of compliance. Consumers also ignore their rights.

Regulators see more coordinated national enforcement actions targeting businesses and awareness campaigns for consumers as key.

Streamlined procedures for injunctions, covering additional sectors may also increase reputation and litigation risks.



Sanctions will be proposed for businesses who fail to meet these enhanced provisions. But it is so far unclear what form these might take.

Pre-contractual information:

The European Commission has already turned to stakeholders to define how to present pre-contractual information and standard contract terms to consumers in a clear way.

Failure to deliver a self-regulatory code endorsed by all stakeholders will make hard law inevitable.

Redefining traders and consumers:

The advent of online marketplaces and the emergence of the gig economy has increasingly blurred the lines between definitions of traders and consumers and the legal certainty each provided.

Proposals will seek greater transparency and clarity for consumers regarding who they are dealing with ('trader' or 'consumer'), and what their rights are in each case.

Opening Pandora's Box

Proposing 'targeted' amendments to the existing Directives will not prevent stakeholders - particularly consumer activists and Member States with higher levels of protection - from seeking broader changes to EU consumer law that could challenge the licence to operate of previously unaffected offline businesses.

What next?

The full impact of the Commission's plans will only become clear over the coming months, when having consulted stakeholders, they start looking in further detail at which precise areas need changing and how.

On certain issues, guidance will be issued to national governments, consumer groups and businesses on how to improve implementation of existing rules.

On others, whilst the European Commission may intend to only present specific targeted changes to the present laws, an attempt to broaden their scope by lawmakers seems inevitable.

Both the European Parliament and EU Member States will discuss and amend the Commission's proposals when presented. An agreement between both is necessary for the new rules to be adopted. This procedure may well take more than a year.

Usually the European Parliament aims at high levels consumer protection while EU Member States have tended to be less ambitious.

The departure of the UK is expected to weaken resistance to a more wholesale revision.

- EU lawmakers could seek to widen the scope of the law to cover unfair B2B commercial practices to ensure the fair treatment of app and content developers by platforms.
- This in turn could impact all B2B contractual relationships whether on or offline.
- The clarification of roles ('trader', 'supplier', 'consumer') intended for the online platforms could also impact other business models such as direct selling.



Multi-channel protection – not as simple as it seems?

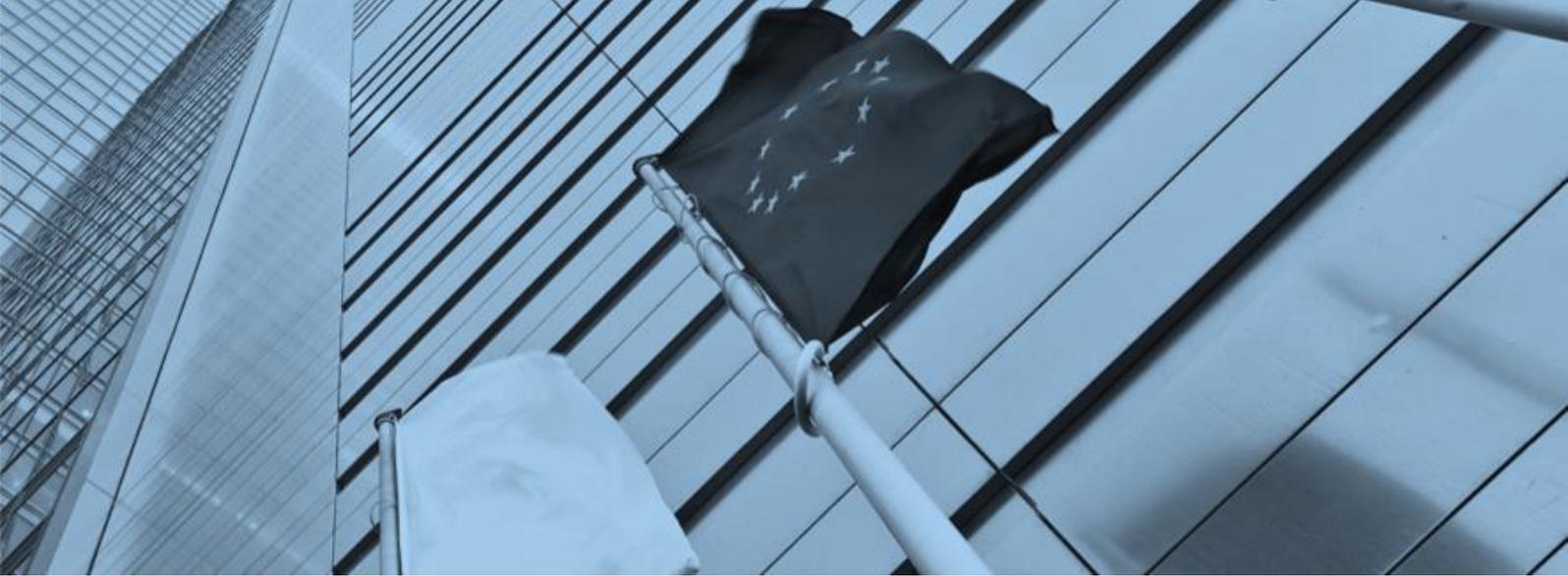
Ensuring that consumers have the same level of protection from a business across all channels (bricks-and-mortar or online retail, analogue or digital content) is a noble objective.

Enhancing consumer rights presents an opportunity for the EU to show its relevance to citizens.

Convincing national governments of the need for further harmonisation of laws in this historically challenging area will be difficult.

Previous efforts have failed because of divergent national systems on guarantees, burden of proof for defective goods and remedies, but the Commission seems confident this time it will be different.

The need to demonstrate added-value to citizens, and the absence of the UK, may make progress more achievable.



- Transparency rules for default ranking criteria could go as far as to oblige platforms to reveal their proprietary algorithms? This would of course face considerable opposition from platforms.

A few things are easier to predict.

- Existing rules on misleading and comparative advertising will remain unchanged.
- There will be no change in price indication rules, for the time being, despite a continuous debate around the trustworthiness of price comparison tools.
- A streamlined injunction procedure may expose both on- and offline

businesses to more consumer complaints, potentially increasing compliance and litigation costs as well as reputational risks.

And one thing is clear:

Achieving strengthened protection for consumers whilst not hindering innovation will require a fine balancing act by lawmakers.

Businesses therefore need to engage with lawmakers to ensure that the review’s objectives can be met whilst not overly restricting the development of new business models.

EU Consumer Laws in a snapshot

Consumer Rights

Directive* covering pre-contractual information and certain aspects of post-contract relations (right of withdrawal, delivery and passing risk etc.)

Unfair Commercial Practices

Directive defining unfair practices and protecting consumers against aggressive and deliberately unclear marketing.

Legislative proposals to revise rules by end of 2017

Injunctions

Directive setting out a mechanism for national enforcement bodies to enforce consumer protection rules through cross-border injunctions against traders.

Unfair Contract Terms

Directive prohibiting unfair standard contract terms that impose detrimental obligations on consumers.

Guidelines or legislative proposal to revise rules by end of 2017

Misleading and Comparative Advertising

Directive prohibiting misleading B2B advertising and regulating comparative B2C advertisements (“like with like”)

Price Indication

Directive requiring the unambiguous and clear indication of the selling price and of the unit price in advertising.

No change foreseen

Consumer Sales and Guarantees

Directive laying out rules on conformity of a good to a contract and stipulating rights for consumers in case of defective products.

Objective to streamline offline and online sales to be pursued through Digital Contracts proposals currently under negotiation

*Directive is an EU legislative act that EU Member States need to incorporate in their national laws but which are open to interpretation.

Brunswick Group

Brunswick is an advisory firm specializing in business critical issues. We help companies build trusted relationships with all their stakeholders.

When clients turn to us, it's because they know that engaging effectively with everyone who has a stake in the company is about more than managing perceptions - it is essential to making business work.

Our background in financial communications means we understand how businesses are wired. It also means integrity is deep in our nature: diligence, openness and accuracy.

Brunswick is one firm globally. Delivering anywhere, we have a reputation for high-caliber, highly experienced people who have diverse backgrounds and skills.

It means whatever the task, no matter how complex or where it is in the world, we can assemble the right expertise from right across the firm.

Our purpose is to help the great value creating organizations of the world play a more successful role in society.

For more information



Philippe Blanchard
Managing Partner

Tel: +32 (0) 2 235 65 13
pblanchard@brunswickgroup.com



Nick Blow
Partner

Tel: +32 (0) 2 235 65 19
nblow@brunswickgroup.com



Véronique Scailteur
Senior Advisor

Tel: +32 (0) 2 235 65 40
vscaiteur@brunswickgroup.com



Contact Brunswick Brussels

Brunswick Group

27 Avenue des Arts
1040 Brussels
Belgium

Tel: + 32 22 35 65 10
brusselsoffice@brunswickgroup.com
www.BrunswickGroup.com