

Omnibus Directive: tighter requirements for sellers and stiff fines 3/10/2021

Directive (EU) 2019/2161¹ adopted in late 2019 (the “Omnibus Directive”) requires member states to transpose it by 28 November 2021, and their amended national rules must come into force by 28 May 2022. This article explores key changes and requirements for traders under the new directive.

A seller in breach will compensate the consumer

Consumers suffering damage from unfair commercial practices will have access to reasonable and effective legal remedies, including compensation for the damage caused to the consumer and either a price reduction or termination of the contract.

Each member state will have discretion to lay down conditions for enforcing these legal remedies and to determine their consequences. The competent authorities will evaluate the substance and severity of an unfair commercial practice, the damage to the consumer, and other circumstances.

Fines of up to 4% of turnover

The maximum fine under the Prohibition of Unfair Commercial Practices Act is EUR 100,000 but the Omnibus Directive provides for stiffer fines up to 4% of the seller's or supplier's annual turnover in one or several member states. If information on their annual turnover is not available, the maximum fine can reach EUR 2 million.

Special information requirements for contracts signed at online shops

The Omnibus Directive introduces several new terms and a wider scope for traders that sell goods or provide services from an online shop. The emphasis is on protecting consumer rights in the digital environment, which is bound to cause adjustments and impose new obligations on sellers or service providers to improve the online environment.

Tougher rules on misleading commercial practices

The Omnibus Directive urges member states to adopt tighter rules for protecting consumers against aggressive or misleading selling practices, with special emphasis on restricting unsolicited visits to the consumer's home.

Misleading commercial practices will include the provision of search results in response to a consumer's online search query without clearly disclosing any paid advertisement.

Consumers who make a purchase often regret it once they realise the seller talked them into it. In such cases each member state can prescribe its own national period of withdrawal during which the consumer can reject any goods purchased as a result of aggressive or misleading marketing practices.

Misleading selling practices will include failure to meet ticket resale requirements with stiff fines.

A ban on differences in the quality of identical goods between

member states

It is no secret that goods vary in quality from country to country. This means that consumers go on shopping trips to other member states not only because they offer lower prices but also because the same goods are of better quality there. The Omnibus Directive will eliminate such cases by stating that false information about the content and quality of identical goods in different member states will be considered a misleading commercial practice subject to a fine from the regulators.

Restrictions on false reviews

Many traders abuse the consumer review function for their products by changing the original reviews or creating new ones. This commercial practice will be treated as misleading, with the trader facing a fine. The same applies where the trader pays someone to post reviews or to change statements for advertising purposes.

Traders will have to check consumer reviews and be able to prove that a particular person indeed purchased the product and posted their review for private reasons.

Tighter conditions for payments using personal data

The Omnibus Directive makes a direct reference to the General Data Protection Regulation (EU) 2016/679, which means that traders have to carry out the obligations it prescribes.

Although these data protection requirements are not new to traders, the Omnibus Directive makes adjustments for distance contracts where the consumer uses their personal data to pay the trader for services or digital content. So the new rules recognise personal data as equivalent to any other means of payment.

¹ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules. Adopted: 27.11.2019. Available [here](#)