

Position Paper on Consumer REFIT

In brief

- EMOTA welcomes the Commission's commitment to ensure that the EU framework for consumer and marketing law is up to date and reflects the technological and other market developments
- The current framework of EU consumer rights is already well-functioning, in particular the harmonised pre-contractual information requirements and other practices in distance selling, such as returns and refunds.
- We would like to see further harmonization in areas which affect online sellers, especially those who operate across borders.
- It should be clear for consumers when they make their purchases whether they buy from a third-party trader or from the online market itself.
- The concept of "dual quality" should be further clarified, in particular in relation to its practical implementation.
- We call the legislators to ensure that the right of withdrawal for free digital services (14 days) would be in line with the general provisions of data protection, e.g. the right to be forgotten.
- We ask that pre-contractual information requirements should be enforceable on modern distant communication devices, such as smartphones and smart assistants by introducing flexibility on the presentation of pre-contractual information to consumers.
- Sellers should not be obliged to accept the return of overused products by consumers.
- Any penalties imposed on companies should be effective, proportionate and dissuasive. However, these should not be linked to an overall annual turnover (minimum 4% proposed by the Commission).
- Sufficient time should be allowed for Member States to transpose and implement the measures which derive from the revision of the consumer rules.

Background

On 11 April 2018 the European Commission made a [proposal](#) to modify some of the existing consumer protection rules deriving from Unfair Commercial Practice Directive (UCPD), Consumer Rights Directive (CRD), and Price Indication and Unfair Contract Terms directives.

General Remarks

Today a large number of online retailers do not sell cross-border. One of the main reasons for this trend is that there is lack of uniformity to comply with national consumer protection rules, next to the fragmented payments landscape, national rules on VAT registration, fragmented parcel delivery markets. Any changes in consumer rules should go towards harmonization to further tackle such barriers on the EU internal market and facilitate online sales. At the same time, consideration should be given that consumer rules in the EU are relatively recent and time is still needed to help the businesses to adjust before adopting new rules or imposing hefty penalties.

Transparency for marketplaces Article 2(4)

EMOTA welcomes the Commission intention to inform customers using online marketplaces whether they make their purchases from a third-party trader or the online marketplace itself and whether they

buy from a trader or an individual. It is also important that online marketplaces can continue to choose the format and means to provide this information, especially if it could be grouped in one location to ensure ease of access to customers.

In the context of ranking criteria, EMOTA believes it is crucial that safeguards are provided for businesses to ensure business confidentiality and intellectual property, including algorithms and trade secrets.

Dual Quality Article 6(2)

EMOTA believes that the UCPD already sufficiently covers the issues that need to be tackled regarding unfair commercial practices, including misleading marketing which could potentially harm the consumer. In addition, the existing product-related information requirements ensure that consumers can already obtain comprehensive information about the composition of products.

The new notion of “dual quality”, an addition proposed to UCPD, contains several terms (such as “significantly different”, “several other Member States”) which are legally unclear and can cause sellers problems with practical enforcement, with no proven benefits for the consumers. Certain flexibility should be allowed to produce products in each Member State, in particular as the consumption is driven by consumer choices.

Free services Article 2 (1)

EMOTA notes the notion of “digital service contract” in the proposal, obtaining the right of withdrawal in the case a customer provides personal data in exchange for a service (e.g. cloud storage, social media, e-mail accounts) rather than in exchange for a price. We stress that the compatibility with GDPR Regulation must be further assessed by co-legislators to avoid any future legal uncertainties for businesses.

Reducing pre-contractual information requirements related to distance communications Article 2 (6)

Modern distant communication devices, such as smart phones and smart assistants, often have very limited space to display information and it would not be appropriate to oblige traders to show proportionate information on these devices. Other available means of communication can provide, in an easily accessible and less burdensome way, the information the consumer needs.

However, we consider it necessary to exclude the information on guarantees and their conditions (see Article 5 (1) (e) Consumer Rights Directive 2011/83 / EU) from the duty to inform.

Taking into account the fact that a guarantee is a voluntary benefit of the company or the manufacturer for the benefit of the consumer, we refuse mandatory details of voluntary guarantee because dealers are unable or unwilling to comply with these regulations, especially with the details of the conditions. This is currently leading to significant uncertainty among traders and many traders therefore refrain from offering this voluntary consumer service.

Right to withdrawal (Art. 2.9n and Art. 2.7 a)

EMOTA welcomes the proposal which aims to balance the current provisions of the consumer’s right to withdraw by terminating the obligation to accept the return of goods which have been overused. It would give the sellers the right to adequately address any potential abusive practices. We have seen that this leads to a diminished value for the goods in question, which traders are forced to sell as second-hand goods due to their ‘overuse’. If no good can be sold nor donated at a reasonable cost to the trader then often such goods must be disposed of, leading to a negative sustainability practice for products which still work as intended.

We also support the modifications to the current legislation which allow the seller to withhold the reimbursement until the trader has received the goods back from the consumer.

Penalties (Art. 1.5)

EMOTA believes that any penalties imposed on companies should be decided on a case-by-case basis and should be effective, proportionate and dissuasive. We believe that fines linked to the company's annual turnover (minimum 4%) are extremely burdensome. At this point, it should be noted that only very few traders deliberately act in anticompetitive manner. In our daily practice we often experience that our members (especially SMEs) are confused by the amount of information obligations and legal requirements and act solely out of ignorance in an anticompetitive manner. Furthermore, we are concerned that sanction levels can act as an inhibitor for new businesses and disproportionately affect small traders who trade across borders as the consumer law is not fully harmonized and many uncertainties remain.

Transposition (Art. 5)

EMOTA calls for a longer transposition period (24 months) to allow the Member States to implement and apply the provisions properly (12 months).

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