



Plenary sitting

A8-0029/2019

25.1.2019

*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules
(COM(2018)0185 – C8-0143/2018 – 2018/0090(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Daniel Dalton

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules (COM(2018)0185 – C8-0143/2018 – 2018/0090(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0185),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0143/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 20 September 2018¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0029/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 2

¹ OJ C 440, 6.12.2018, p. 66.

Text proposed by the Commission

(2) Consumer protection legislation should be applied effectively throughout the Union. Yet, the comprehensive Fitness Check of consumer and marketing law directives carried out by the Commission in 2016 and 2017 in the framework of the Regulatory Fitness and Performance (REFIT) programme concluded that the effectiveness of the Union consumer legislation is compromised by lack of awareness both among traders and consumers and by insufficient enforcement and limited consumer redress possibilities.

Amendment 2

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) To facilitate more consistent application of penalties, in particular in intra-Union infringements, widespread infringements and widespread infringements with a Union dimension **referred to** in Regulation (EU) 2017/2394, common non-exhaustive criteria should be introduced for the application of fines. These criteria should include the cross-border nature of the infringement, namely whether the infringement has harmed consumers also in other Member States. Any redress provided by the trader to consumers for the harm caused should also be taken into account. Repeated infringements by the same perpetrator shows a propensity to commit such infringements and is therefore a significant indication of the gravity of the conduct and, accordingly, of the need to increase the level of the penalty to achieve effective deterrence. The criterion of financial benefits gained, or losses avoided, due to the infringement is especially relevant

Amendment

(2) Consumer protection legislation should be applied effectively throughout the Union. Yet, the comprehensive Fitness Check of consumer and marketing law directives carried out by the Commission in 2016 and 2017 in the framework of the Regulatory Fitness and Performance (REFIT) programme concluded that the effectiveness of the Union consumer legislation is compromised by lack of awareness both among traders and consumers **and the fact that existing means of redress are not sufficiently used.**

Amendment

(6) To facilitate more consistent application of penalties, in particular in intra-Union infringements, widespread infringements and widespread infringements with a Union dimension **as defined** in Regulation (EU) 2017/2394, common non-exhaustive criteria should be introduced for the application of fines. These criteria should include the cross-border nature of the infringement, namely whether the infringement has harmed consumers also in other Member States **in the event this information is available through the provisions contained in the Regulation (EU) 2017/2394 relating to information exchange.** Any redress provided by the trader to consumers for the harm caused, **as well as the degree to which the trader has acted in order to remedy the consequences of the infringement in question and to mitigate its potential adverse effects,** should also be taken into account. Repeated infringements by the same perpetrator shows a propensity

where the national law provides for fines as penalties and sets the maximum fine as percentage of the trader's turnover and where the infringement concerns only one or some of the markets in which the trader is operating.

to commit such infringements and is therefore a significant indication of the gravity of the conduct and, accordingly, of the need to increase the level of the penalty to achieve effective deterrence. The criterion of financial benefits gained, or losses avoided, due to the infringement is especially relevant where the national law provides for fines as penalties and sets the maximum fine as percentage of the trader's turnover and where the infringement concerns only one or some of the markets in which the trader is operating.

Amendment 3

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Furthermore, **any fines imposed as penalties should take into account *the annual turnover and profits of the infringing trader* and any fines that have been imposed on the trader in other Member States for the same infringement in, particular, in the context of the widespread infringements *of consumer law* and widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement in accordance with Regulation (EU) 2017/2394.**

Amendment

(7) Furthermore, penalties should take into account any fines that have been imposed on the trader in other Member States for the same infringement in, particular, in the context of the widespread infringements and widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement in accordance with Regulation (EU) 2017/2394.

Amendment 4

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) These common non-exhaustive criteria for the application of penalties may not be relevant in deciding on penalties regarding every infringement, in particular regarding non-serious infringements.

Amendment

(8) These common non-exhaustive criteria for the application of penalties may not be relevant in deciding on penalties regarding every infringement, in particular regarding non-serious infringements.

Member States should also take account of other general principles of law applicable to the imposition of penalties, such as the principle of non bis in idem.

Member States should also take account of other general principles of law applicable to the imposition of penalties, such as the principle of non bis in idem ***and applicable procedural and data protection safeguards contained in Union and national law and in the Charter of Fundamental Rights.***

Amendment 5

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) To ensure that Member State authorities can impose effective, proportionate and dissuasive penalties in relation to widespread infringements ***of consumer law*** and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement in accordance with Regulation (EU) 2017/2394, fines should be introduced as a mandatory element of penalties for such infringements. In order to ensure deterrence of the fines, Member States should set in their national law the maximum fine for such infringements at a level that is at least 4% of the trader's annual turnover in the Member State concerned.

Amendment

(9) To ensure that Member State authorities can impose effective, proportionate and dissuasive penalties in relation to widespread infringements and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement in accordance with Regulation (EU) 2017/2394, fines should be introduced as a mandatory element of penalties for such infringements. In order to ensure deterrence of the fines, Member States should set in their national law the maximum ***amount of*** fine for such infringements at a level that is ***10 000 000 EUR or*** at least 4% of the trader's annual turnover ***of the previous financial year*** in the Member State concerned, ***whichever is higher.***

Amendment 6

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) Where, as a result of the coordination mechanism under Regulation (EU) 2017/2394, a single national competent authority within the meaning of

Amendment

(10) Where, as a result of the coordination mechanism under Regulation (EU) 2017/2394, a single national competent authority within the meaning of

that Regulation imposes a fine on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension, it should be able to impose a fine *of* at least 4% of the trader's annual turnover in all Member States concerned *by the coordinated enforcement action*.

that Regulation imposes a fine on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension, it should be able to impose a fine *up to 10 000 000 EUR or* at least 4% of the trader's annual turnover *of the previous financial year* in all Member States concerned, *whichever is higher*.

Amendment 7

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Member States should not be prevented from maintaining or introducing in their national law higher maximum turnover-based fines for widespread infringements and widespread infringements with a Union dimension of consumer law, as defined in Regulation EU 2017/2394. The requirement to set the fine at a level of not less than 4 % of the trader's turnover should not apply to any additional rules of the Member States on periodic penalty payments, such as daily fines, for non-compliance with any decision, order, interim measure, trader's commitment or other measure with the aim of stopping the infringement.

Amendment

deleted

Amendment 8

Proposal for a directive Recital 12

Text proposed by the Commission

(12) When deciding for which purpose the revenues from fines are used, Member States should take into account the ultimate objective of consumer legislation and its enforcement which is the protection of the general interest of consumers. Member

Amendment

(12) When deciding for which purpose the revenues from fines are used, Member States should take into account the ultimate objective of consumer legislation and its enforcement which is the protection of the general interest of consumers. Member

States should therefore ***consider allocating at least part of*** the revenues from fines to enhance consumer protection within their jurisdictions, ***such as supporting consumer movement or*** activities aimed at empowering consumers.

States should therefore ***allocate*** the revenues from fines ***to a fund dedicated to providing redress in case of harm suffered by consumers or*** to enhance consumer protection, ***or the protection of other public interests*** within their jurisdictions, ***including allocating them to*** activities aimed at empowering consumers, ***delivered either directly by the Member State or through national or European consumer organisations.***

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Member States should ensure that remedies are available for consumers harmed by unfair commercial practices ***in order to eliminate all the effects of those unfair practices.*** In order to meet that objective, Member States should make both contractual and non-contractual remedies available. ***As a minimum,*** the contractual remedies provided by the Member States should include the right to contract ***termination.*** Non-contractual remedies provided under national law should, ***as a minimum,*** include the right to compensation for damages. Member States would not be prevented from maintaining or introducing rights to additional remedies for consumers harmed by unfair commercial practices in order to ensure full removal of the effects of such practices.

Amendment

(15) Member States should ensure that remedies are available for consumers harmed by unfair commercial practices. In order to meet that objective, Member States should make both contractual and non-contractual remedies available ***in their national law.*** The contractual remedies provided by the Member States should include the right to ***terminate a contract and other remedies which reflect the varying seriousness of potential harms, including the right to price reduction or compensation for damage.*** Non-contractual remedies provided under national law should include the right to compensation for damages. Member States would not be prevented from maintaining or introducing rights to additional remedies for consumers harmed by unfair commercial practices in order to ensure full removal of the effects of such practices.

Amendment 10

Proposal for a directive Recital 19

(19) Specific transparency requirements for online marketplaces should therefore be provided in Directive 2011/83/EU to inform consumers using online marketplaces about the main parameters determining ranking of offers, whether they enter into a contract with a trader or a non-trader (such as another consumer), whether consumer protection law applies and which trader is responsible for the performance of the contract and for ensuring consumer rights when these rights apply. This information should be provided in a clear and comprehensible manner and not only through a reference in the standard Terms and Conditions or similar contractual document. The information requirements for online marketplaces should be proportionate and need to strike a balance between a high level of consumer protection and the competitiveness of online marketplaces. Online marketplaces should not be required to list specific consumer rights when informing consumers about their applicability or non-applicability. The information to be provided about the responsibility for ensuring consumer rights depends on the contractual arrangements between the online marketplace and the relevant third party traders. Online marketplace may refer to the third party trader as being solely responsible for ensuring consumer rights or describe its specific responsibilities where it assumes the responsibility for certain aspects of the contract, for example, delivery or the exercise of the right of withdrawal. The obligation to provide information about the main parameters determining ranking of search results is without prejudice to any trade secrets regarding the underlying algorithms. This information should explain the main default parameters used by the marketplace but does not have to be presented in a customized manner for each

(19) Specific transparency requirements for online marketplaces should therefore be provided in Directive **2005/29/EU and Directive** 2011/83/EU to inform consumers using online marketplaces about the main parameters **presented in order of relative importance** determining **the** ranking of offers, whether they enter into a contract with a trader or a non-trader (such as another consumer), whether consumer protection law applies and which trader is responsible for the performance of the contract and for ensuring consumer rights when these rights apply. This information should be provided in a clear and comprehensible manner and not only through a reference in the standard Terms and Conditions or similar contractual document. The information requirements for online marketplaces should be proportionate and need to strike a balance between a high level of consumer protection and the competitiveness of online marketplaces. Online marketplaces should not be required to list specific consumer rights when informing consumers about their applicability or non-applicability. The information to be provided about the responsibility for ensuring consumer rights depends on the contractual arrangements between the online marketplace and the relevant third party traders. Online marketplace may refer to the third party trader as being solely responsible for ensuring consumer rights or describe its specific responsibilities where it assumes the responsibility for certain aspects of the contract, for example, delivery or the exercise of the right of withdrawal. The obligation to provide information about the main parameters determining ranking of search results is without prejudice to any trade secrets **in accordance with Directive 2016/943** regarding the underlying algorithms. This information should

individual search query.

explain the main default parameters used by the marketplace but does not have to be presented in a customized manner for each individual search query.

Amendment 11

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Transparency requirements for online marketplaces need to be robust to protect the consumer even after the consumer is bound by a distance or off-premises contract, or any corresponding offer if additional essential information becomes available after the sale. Consumers should be protected from buying or using illegal content, which may pose a threat to their health and safety, and be allowed to exercise any available remedies, including through alternative dispute resolution mechanisms provided for in Directive 2013/11/EU of the European Parliament and of the Council^{1a}. They should therefore be informed when they have bought an illegal product or service, or in the event the offer was misleading. Online marketplaces do not always know when an offer or a product is illegal. However, when they become aware of such information after the sale, they should share it not only with the traders but also with the consumers. Such a requirement is in line with Directive 2000/31/EC of the European Parliament and of the Council^{1b}, since it would only apply once an online marketplace has received a notice, confirmed its validity, and proceeded with the takedown of the illegal offer, product or service.

^{1a} Directive 2013/11/EU of the European Parliament and of the Council of 21 May

2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

^{1b} Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

Amendment 12

Proposal for a directive Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) It should be noted that comparison websites do not necessarily rank and display products objectively by price and quality and that consumers may not be aware that online marketplaces may receive payment in order to give undue prominence to a particular product or service. As a result, national regulatory bodies should monitor sectors where consumers tend to use comparison websites and undertake research to ascertain whether consumers' understanding of marketplace rankings is accurate. In the event that there are discrepancies then sector-specific action should be undertaken.

Amendment 13

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

(20) *In accordance with Article 15(1) of*

(20) *Online* marketplaces should *be*

*Directive 2000/31/EC⁴⁵, online marketplaces should **not be required to verify the legal status of third party suppliers. Instead, the online marketplace should require third party suppliers of products on the online marketplace to indicate their status as traders or non-traders for the purposes of consumer law and to provide this information to the online marketplace.***

obliged to take reasonable steps to ensure that the services they provide are not subject to misuse, leaving consumers vulnerable. There should be an adequate level of protection consistent with the nature of the goods or services sold and any actual evidence of harm arising from the sale. Specifically, they should monitor activity which suggests that a trader is purporting to be a non-trader in order to influence consumers' choices and expectations of the quality of the product or service they are purchasing.

⁴⁵ *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).*

Amendment 14

Proposal for a directive Recital 21

Text proposed by the Commission

(21) Digital content and digital services are often supplied online under contracts where the consumer does not pay a price but provides personal data to the trader. Digital services are characterised by continuous involvement of the trader over the duration of the contract to enable the consumer to make use of the service, **for instance, access to, creation, processing, storing or sharing** of data in digital form. Examples of digital services are **subscription contracts to content platforms, cloud storage, webmail, social media and cloud applications**. The continuous involvement of the service provider justifies the application of the rules on the right of withdrawal provided in

Amendment

(21) Digital content and digital services are often supplied online under contracts where the consumer does not pay a price but provides personal data to the trader. Digital services are characterised by continuous involvement of the trader over the duration of the contract to enable the consumer to make use of the service **which allows the creation, processing, access to or storage** of data in digital form. Examples of digital services are **video and audio sharing services and other file hosting, word processing or games offered in the cloud computing environment and social media**. The continuous involvement of the service provider justifies the application of the rules on the right of

Directive 2011/83/EU that effectively allow the consumer to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not. In contrast, contracts for the supply of digital content ***which is not supplied on a tangible medium*** are characterised by one-off action by the trader to supply to the consumer a specific piece or pieces of digital content, such as specific music or video files. This one-off nature of the provision of digital content is at the basis of the exception from the right of withdrawal pursuant to Article 16(m) of Directive 2011/83/EU, whereby the consumer loses the right of withdrawal when the performance of the contract is started, such as download or streaming of the specific content.

withdrawal provided in Directive 2011/83/EU that effectively allow the consumer to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not. In contrast, contracts for the supply of digital content are characterised by one-off action by the trader to supply to the consumer a specific piece or pieces of digital content, such as specific music or video files. This one-off nature of the provision of digital content is at the basis of the exception from the right of withdrawal pursuant to ***point (m) of*** Article 16 of Directive 2011/83/EU, whereby the consumer loses the right of withdrawal when the performance of the contract is started, such as download or streaming of the specific content.

Amendment 15

Proposal for a directive Recital 22

Text proposed by the Commission

(22) Directive 2011/83/EU already applies to contracts for the supply of digital content ***which is not supplied on a tangible medium (i.e. supply of online digital content)*** regardless of whether the consumer pays a price in money or provides personal data. In contrast, Directive 2011/83/EU only applies to service contracts, including contracts for digital services, under which the consumer pays or undertakes to pay a price. Consequently, that Directive does not apply to contracts for digital services under which the consumer provides personal data to the trader without paying a price. Given their similarities and the interchangeability of paid digital services and digital services provided in exchange for personal data, they should be subject to the same rules under Directive 2011/83/EU.

Amendment

(22) Directive 2011/83/EU already applies to contracts for the supply of digital content regardless of whether the consumer pays a price in money or provides personal data. In contrast, Directive 2011/83/EU only applies to service contracts, including contracts for digital services, under which the consumer pays or undertakes to pay a price. Consequently, that Directive does not apply to contracts for digital services under which the consumer provides personal data to the trader without paying a price. Given their similarities and the interchangeability of paid digital services and digital services provided in exchange for personal data, they should be subject to the same rules under Directive 2011/83/EU.

Amendment 16

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) Consistency should be ensured between the scope of application of Directive 2011/83/EU and the [Digital Content Directive], which applies to contracts for the supply of digital content *of* digital services under which the consumer provides personal data to the trader.

Amendment

(23) Consistency should be ensured between the scope of application of Directive 2011/83/EU and the [Digital Content Directive], which applies to contracts for the supply of digital content *or* digital services under which the consumer provides *or undertakes to provide* personal data to the trader.

Amendment 17

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) Therefore, the scope of Directive 2011/83/EU should be extended to cover also contracts under which the trader supplies or undertakes to supply a digital service to the consumer, and the consumer provides or undertakes to provide personal data. Similar to contracts for the supply of digital content *which is not supplied on a tangible medium*, the Directive should apply whenever the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital content or digital service, and the trader does not process this data for any other purpose. *Any processing* of personal data *should comply with Regulation (EU) 2016/679*.

Amendment

(24) Therefore, the scope of Directive 2011/83/EU should be extended to cover also contracts under which the trader supplies or undertakes to supply a digital service to the consumer, and the consumer provides or undertakes to provide personal data. Similar to contracts for the supply of digital content, the Directive should apply whenever the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital content or digital service *in accordance with the [Digital Content Directive]*, and the trader does not process this data for any other purpose. *Union law on the protection of personal data applies to any personal data processed in connection with contracts for the supply of digital content or digital services*.

Amendment 18

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Where digital content and digital services are not supplied in exchange for a price, Directive 2011/83/EU should also not apply to situations where the trader collects personal data ***exclusively to maintain in conformity digital content or a digital service or*** for the sole purpose of meeting legal requirements. Such situations could include cases where the registration of the consumer is required by applicable laws for security and identification purposes, ***or cases where the developer of open-source software only collects data from users to ensure the compatibility and interoperability of open-source software.***

Amendment 19

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Directive 2011/83/EU should also not apply to situations where the trader only collects metadata, ***such as the IP address, browsing history or other information collected and transmitted for instance by cookies,*** except where this situation is considered a contract under national law. It should also not apply to situations where the consumer, without having concluded a contract with the trader, is exposed to advertisements exclusively in order to gain access to digital content or a digital service. However, Member States should remain free to extend the application of the rules of Directive 2011/83/EU to such situations or to otherwise regulate such situations which are excluded from the scope of that

Amendment

(25) ***In order to ensure full alignment with the Digital Content Directive,*** where digital content and digital services are not supplied in exchange for a price, Directive 2011/83/EU should also not apply to situations where the trader collects personal data for the sole purpose of meeting legal requirements ***to which the trader is subject.*** Such situations could include cases where the registration of the consumer is required by applicable laws for security and identification purposes.

Amendment

(26) Directive 2011/83/EU should also not apply to situations where the trader only collects metadata, ***information concerning the consumer's device or the browsing history,*** except where this situation is considered a contract under national law. It should also not apply to situations where the consumer, without having concluded a contract with the trader, is exposed to advertisements exclusively in order to gain access to digital content or a digital service. However, Member States should remain free to extend the application of the rules of Directive 2011/83/EU to such situations or to otherwise regulate such situations which are excluded from the scope of that Directive.

Directive.

Amendment 20

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) Contracts for individual deliveries of non-network energy should be exempted from the right of withdrawal. Due to the fluctuations in market prices, the trader would otherwise incur an incalculable resale risk.

Amendment 21

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(33) Directive 2011/83/EU provides fully harmonised rules regarding the right of withdrawal from distance and off-premises contracts. In this context, two concrete obligations have been shown to constitute disproportionate burdens on traders and should be deleted.

deleted

Amendment 22

Proposal for a directive Recital 34

Text proposed by the Commission

Amendment

(34) The first relates to the consumer right to withdraw from sales contracts concluded at a distance or off-premises even after using goods more than necessary to establish their nature, characteristics and functioning. According to Article 14(2) of Directive

deleted

2011/83/EU, a consumer is still able to withdraw from the online/off-premises purchase even if he or she has used the good more than allowed; however, in such a case, the consumer can be held liable for any diminished value of the good.

Amendment 23

Proposal for a directive Recital 35

Text proposed by the Commission

Amendment

(35) *The obligation to accept the return of such goods creates difficulties for traders who are required to assess the 'diminished value' of the returned goods and to resell them as second-hand goods or to discard them. It distorts the balance between a high level of consumer protection and the competitiveness of enterprises pursued by Directive 2011/83/EU. The right for consumers to return goods in such situations should therefore be deleted. Annex I of Directive 2011/83/EU 'Information concerning the exercise of the right of withdrawal' should also be adjusted in accordance with this amendment.* **deleted**

Amendment 24

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

(36) *The second obligation concerns Article 13 of Directive 2011/83/EU, according to which traders can withhold the reimbursement until they have received the goods back, or until the consumer has supplied evidence of having sent them back, whichever is the earliest. The latter option may, in some circumstances, effectively require traders* **deleted**

to reimburse consumers before having received back the returned goods and having had the possibility to inspect them. It distorts the balance between a high level of consumer protection and the competitiveness of enterprises pursued by Directive 2011/83/EU. Therefore, the obligation for traders to reimburse the consumer on the mere basis of the proof that the goods have been sent back to the trader should be deleted. Annex I of Directive 2011/83/EU 'Information concerning the exercise of the right of withdrawal' should also be adjusted in accordance with this amendment.

Amendment 25

Proposal for a directive Recital 38

Text proposed by the Commission

(38) Considering technological developments, it is necessary to remove the reference to fax number from the list of the means of communication in Article 6(1)(c) of Directive 2011/83/EU since fax is rarely used and largely obsolete. Furthermore, traders should be able to **provide, as alternative to an e-mail address**, other means of online communication with consumers, for example, online forms and chats, provided that such alternative means enable the consumer to retain the content of the communication on a durable medium in a similar way as e-mail. Annex I of the Directive 'Information concerning the exercise of the right of withdrawal' should also be adjusted **in accordance with this amendment**.

Amendment

(38) Considering technological developments, it is necessary to remove the reference to fax number from the list of the means of communication in Article 6(1)(c) of Directive 2011/83/EU since fax is rarely used and largely obsolete. **Given the variety of types of businesses engaged in trade it is considered not necessary to oblige the use of online communication in all cases by all traders. Nevertheless, if the trader uses online communication, those details should be provided to the consumer.** Furthermore, traders should be able to **choose to use** other means of online communication with consumers, for example, online forms and chats, provided that such alternative means enable the consumer to retain the content of the communication on a durable medium in a similar way as e-mail. Annex I of the Directive 'Information concerning the exercise of the right of withdrawal' should also be adjusted **accordingly**.

Amendment 26

Proposal for a directive Recital 40

Text proposed by the Commission

(40) *No* 11 of Annex I to Directive 2005/29/EC that prohibits hidden advertising in editorial content in media should be adjusted in order to make it clear that the same prohibition applies also where a trader provides information to a consumer in the form of search results in response to the consumer's online search query.

Amendment

(40) ***Point*** 11 of Annex I to Directive 2005/29/EC that prohibits hidden advertising in editorial content in media should be adjusted in order to make it clear that the same prohibition applies also where a trader provides information to a consumer in the form of ***results that are displayed in a prominent manner that they would not otherwise attain if the results were displayed as part of the main body of search results*** in response to the consumer's online search query. ***Such prominent placement should be clearly marked.***

Amendment 27

Proposal for a directive Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) Consumers increasingly rely on consumer reviews and recommendations when they make purchasing decisions. It should therefore be considered as an unfair commercial practice to mislead consumers by stating that a review is truthful when no reasonable and proportionate steps have been taken to ensure that that review reflects real consumers' experiences. Such steps could include for instance technical means to verify the reliability of the person posting a review, requesting information to verify that the consumer has actually used the product, and providing clear information to consumers on how reviews are processed, for example, if all reviews, either positive or negative, are posted or whether these reviews have been

sponsored or influenced by a contractual relationship with a trader.

Amendment 28

Proposal for a directive Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) For the same reason Annex I of Directive 2005/29/EC should be updated in order to include advertisements or recommendations which give the false impression that friends or acquaintances purchased, used or recommended a product, service or digital content.

Amendment 29

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

(41) Article 16 of the Charter of Fundamental Rights of the EU guarantees the freedom to conduct a business in accordance with Union law and national laws and practices. However, marketing across Member States of products as being identical when, in reality, they have a significantly different composition or characteristics may mislead consumers and cause them to take a transactional decision that they would not have taken otherwise.

(41) The marketing of a product with identical or seemingly identical presentation to product, which is marketed under the same brand but presents differences in composition or characteristics, and when such distinction is not clearly and comprehensively marked so as to be immediately visible to the consumer, is misleading practice. Such practice should be considered unfair and therefore added to the list of misleading commercial practices which are in all circumstances considered unfair under the Annex I of the Directive 2005/29/EC. However, a trader may adapt products of the same brand for different geographical markets due to legitimate factors, namely the sourcing of local ingredients, requirements of national law, the reformulation objectives, or demonstrable consumer preferences,

while such preferences must be borne out by satisfactory evidence. Possible evidence may arise from consumer trials using blind tasting or testing of products and other methods of determining a clear preference demonstrated in the choice of consumers. In cases where goods are materially different in their composition or characteristics, while creating the impression by its appearance, description or pictorial representation that these goods are identical to other goods marketed in another Member State, this difference should be clearly and comprehensibly marked so as to be immediately visible to the consumer; However, in particular, in the case of products marketed for use by infants or young children, such as baby food, it is understood that regional differences or taste preferences are very unlikely to manifest themselves in such a clear manner and it is not possible for this reason to be relied upon when the trader markets products with materially different composition or characteristics.

Amendment 30

Proposal for a directive Recital 42

Text proposed by the Commission

Amendment

(42) Such a practice can therefore be qualified as contrary to Directive 2005/29/EC based on a case by case assessment of relevant elements. In order to facilitate the application of existing law by Member States' consumer and food authorities, guidance on the application of current EU rules to situations of dual quality of food products was provided in the Commission Notice of 26.9.2017 'on the application of EU food and consumer protection law to issues of Dual Quality of products – The specific case of food'.⁴⁶ In this context, the Commission's Joint

deleted

Research Centre is currently developing a common approach to the comparative testing of food products.

⁴⁶ C(2017)6532.

Amendment 31

Proposal for a directive Recital 43

Text proposed by the Commission

Amendment

(43) However, the enforcement experience has shown that it may be unclear to consumers, traders and national competent authorities which commercial practices could be contrary to the Directive 2005/29/EC in the absence of an explicit provision. Therefore, Directive 2005/29/EC should be amended to ensure legal certainty both for traders and enforcement authorities by addressing explicitly 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. Competent authorities should assess and address on a case by case basis such practices according to the provisions of the Directive. In undertaking its assessment the competent authority should take into account whether such differentiation is easily identifiable by consumers, a trader's right to adapt products of the same brand for different geographical markets due to legitimate factors, such as availability or seasonality of raw materials, defined consumer preferences or voluntary strategies aimed at improving access to healthy and nutritious food as well as the traders' right to offer products of the same brand in packages of different weight or volume in different geographical markets.

deleted

Amendment 32

Proposal for a directive

Recital 44

Text proposed by the Commission

(44) While off-premises sales constitute a legitimate and well-established sales channel, ***like sales at a trader's business premises and distance-selling***, some particularly aggressive or misleading marketing practices in the context of ***visits*** to the consumer's home without the consumer's prior agreement or during commercial excursions can put consumers under pressure to make purchases of ***goods*** they would not otherwise buy and/or purchases at excessive prices, often involving immediate payment. Such practices often target elderly or other vulnerable consumers. ***Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or commercial excursions, on grounds of public policy or the respect for consumers' private life protected by Article 7 of the Charter of Fundamental Rights of the EU.*** In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to ***make arrangements without the need for a case-by-case assessment of the specific practice***, to protect the legitimate interests of consumers with regard to ***unsolicited visits*** at their private home by a trader ***in order to offer or sell products*** or in relation to commercial excursions organised by a trader with the

Amendment

(44) While off-premises sales constitute a legitimate and well-established sales channel some particularly aggressive or misleading marketing practices in the context of ***persistent and unwanted solicitations*** to the consumer's home without the consumer's prior agreement or during commercial excursions can put consumers under pressure to make purchases of ***products*** they would not otherwise buy and/or purchases at excessive prices, often involving immediate payment. Such practices often target elderly or other vulnerable consumers. In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to ***adopt provisions*** to protect the legitimate interests of consumers with regard to ***specific practices associated with persistent and unwanted solicitations*** at their private home by a trader or in relation to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such ***provisions*** are proportionate, ***non-discriminatory and justified by overriding reasons in the public interest***. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the ***practices that are subject to those national provisions, as well as whether they are proportionate and legal***.

aim or effect of promoting or selling products to consumers where such *arrangements* are justified *on grounds of public policy or the protection of private life*. *Any such provisions should be proportionate and not discriminatory*. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the proportionate *nature and legality of those measures*.

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point -1 (new)

Directive 2005/29/EC

Article 2 – paragraph 1 – points l a, l b and l c (new)

Text proposed by the Commission

Amendment

(-1) In Article 2, paragraph 1, the following points are added:

(la) ‘online marketplace’ means a service provider which allows consumers to conclude online contracts with traders and consumers on the online marketplace’s online interface;

(lb) ‘comparison service’ means a service that offers a comparison of different offers made by traders of goods or services to consumers based on criteria, including price, features or reviews, or that identify relevant traders of goods, services or digital content to consumers, with a view to facilitating the initiating of direct transactions between those traders and consumers, irrespective of where those transactions are ultimately concluded;

(lc) ‘online interface’ means online interface as defined in point (16) of Article 2 of Regulation (EU) 2018/302.

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point a

Directive 2005/29/EC

Article 3 – paragraph 5

Text proposed by the Commission

This Directive does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to ***aggressive or misleading*** marketing or selling practices in the context of ***unsolicited visits*** by a trader to a consumer's home, or with regard to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers, provided that such provisions are justified ***on grounds of public policy or the protection of the respect for private life***.

Amendment

This Directive does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to ***specific*** marketing or selling practices ***that are identified as aggressive or misleading*** in the context of ***persistent and unwanted solicitations*** by a trader to a consumer's home, or with regard to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers, provided that such provisions are ***proportionate, non-discriminatory and justified by overriding reasons in the public interest***.

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2005/29/EC

Article 6 – paragraph 2 – point c

Text proposed by the Commission

(2) ***The following point (c) is inserted in paragraph 2 of Article 6:***

‘ (c) Any marketing of a product as being identical to the same product marketed in several other Member States, while those products have significantly different composition or characteristics; ’

Amendment

deleted

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 3 a (new)

Directive 2005/29/EC

Article 7 – paragraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(3a) *In Article 7(4), the following point is added:*

'(ea) *for products or services offered on online marketplaces, whether the third party offering the goods or services is a trader or not.'*

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 3 b (new)

Directive 2005/29/EC

Article 7 – paragraphs 5 a and 5 b (new)

Text proposed by the Commission

Amendment

(3b) *In Article 7, the following paragraphs are added:*

'5a. *Where an online marketplace or comparison service provides access to consumer reviews of products, the following information shall be regarded as material:*

(a) *a description of the processes used to solicit and present consumers' reviews and whether the authenticity of those reviews is checked; and*

(b) *where such checks take place, a description of the main characteristics of the check.*

5b. *When providing consumers with the possibility to search for products on the basis of a query in the form of a keyword, phrase or other input, online marketplaces and comparison services shall provide information on the main parameters, presented in order of relative importance, determining the ranking of offers presented to the consumer as result of his search query.'*

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2005/29/EC

Article 11a – paragraph 1

Text proposed by the Commission

1. ***In addition to the requirement to ensure adequate and effective means to enforce compliance in Article 11, Member States shall ensure that contractual and non-contractual remedies are **also** available for consumers harmed by unfair commercial practices **in order to eliminate all the effects of those unfair commercial practices** in accordance with their national law.***

Amendment

1. Member States shall ensure that contractual and non-contractual remedies are available for consumers **who are** harmed by unfair commercial practices, in accordance with their national law.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2005/29/EC

Article 11 a – paragraph 2

Text proposed by the Commission

2. Contractual remedies shall include, **as a minimum**, the possibility for the consumer to unilaterally terminate the contract.

Amendment

2. Contractual remedies shall include the possibility for the consumer to unilaterally terminate the contract. ***Additional contractual remedies which reflect the nature and gravity of the non-compliance shall also be provided, including the right to obtain a price reduction or the right to obtain compensation for damage. Those remedies shall be without prejudice to Union or national law governing the application of remedies.***

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 4

Text proposed by the Commission

3. Non-contractual remedies shall include, **as a minimum**, the possibility of compensation for damages suffered by the consumer.

Amendment

3. Non-contractual remedies shall include the possibility of compensation for damages suffered by the consumer.’

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) the number of consumers **affected, including those** in other Member **State(s)**;

Amendment

(b) the number of consumers **who have suffered damage in the Member State concerned and** in other Member **States, where such information is made available in accordance with Article 35 of Regulation (EU) 2017/2394;**

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 2 – point c

Text proposed by the Commission

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers;

Amendment

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers, **including actions taken by the trader to report the infringement or to cooperate with the competent courts or administrative authorities;**

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC
Article 13 – paragraph 2 – point d

Text proposed by the Commission

(d) ***where appropriate***, the intentional or negligent character of the infringement;

Amendment

(d) the intentional or negligent character of the infringement;

Amendment 44

Proposal for a directive
Article 1 – paragraph 1 – point 5
Directive 2005/29/EC
Article 13 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) whether the trader claims that they complied with relevant codes of conduct or qualifications;

Amendment 45

Proposal for a directive
Article 1 – paragraph 1 – point 5
Directive 2005/29/EC
Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall exercise the powers laid down in this Article proportionately, efficiently and effectively in accordance with Union law, including in accordance with the principles of the Charter of Fundamental Rights of the European Union, applicable procedural safeguards and the Union rules on data protection, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council^{1a}, and national law.

^{1a}Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the

processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 3

Text proposed by the Commission

3. *Where the penalty to be imposed is a fine, the infringing trader's annual turnover and net profits as well as any fines imposed for the same or other infringements of this Directive in other Member States shall also be taken into account in the determination of its amount.*

Amendment

3. Any fines imposed for the same infringements of this Directive in other Member States shall also **be taken** into account in the determination of **the level of penalty**.

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension *within the meaning* of Regulation (EU) **No 2017/2934** include the possibility to impose fines, the maximum amount of which shall be at least 4 % of the trader's annual turnover in the Member State or Member States concerned.

Amendment

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension **to be imposed as a result of a coordinated action launched in accordance with Chapter IV** of Regulation (EU) **2017/2394** include the possibility to impose fines, **and that** the maximum amount of which shall be **10 000 000 EUR or** at least 4 % of the trader's annual turnover **of the previous financial year** in the Member State or Member States concerned, **whichever is higher**.

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 5

Text proposed by the Commission

5. ***When deciding about the allocation of revenues from fines Member States shall take into account the general interest of consumers.***

Amendment

5. ***Member States shall use revenues from fines to enhance the protection of the general interest of consumers, including through the establishment of a fund dedicated to providing redress in cases of harm suffered by consumers, and, where applicable, in cases of other harms, such as harm to environmental interests or harm to other protected public interests, resulting the infringement.***

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/29/EC

Article 13 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. ***Member States shall not be required to establish a comprehensive system of public enforcement in order to enforce penalties under this Directive.***

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point -6 (new)

Directive 2005/29/EC

Annex I – point 6 a (new)

Text proposed by the Commission

Amendment

(-6) ***In Annex I, the following point is inserted:***

'6a. ***Show a price reduction without indicating the reference price on which***

the announcement of the price reduction is based and without being able to prove the correctness of that reference price within 30 days prior to the announcement.'

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2005/29/EC

Annex I – point 11

Text proposed by the Commission

11. Using editorial content in the media, or providing information to a consumer's online search query, to promote a product where a trader has paid for the promotion without making that clear in the content or search results or by images or sounds clearly identifiable by the consumer (advertorial; paid placement or paid inclusion). This is without prejudice to Directive 2010/13/EU⁴⁸.

⁴⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

Amendment

11. Using editorial content in the media, or providing information to a consumer's online search query, to promote a product where a trader has *directly or indirectly* paid for the promotion *or prominent placement bypassing the main body of search results* without making that clear *in a concise, easy and intelligible form* in the content or search results or by images or sounds clearly identifiable by the consumer(advertorial; paid placement or paid inclusion). This is without prejudice to Directive 2010/13/EU⁴⁸.

⁴⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 6 a (new)

Directive 2005/29/EC

Annex I – point 13 a (new)

Text proposed by the Commission

Amendment

(6a) *In Annex I, the following point is inserted:*

'13a. Stating or otherwise creating the impression by its appearance, description or pictorial representation that a good is identical or seemingly identical to another good marketed in another Member State when it is not, unless those goods differ on account of clear and demonstrable regional consumer preferences, the sourcing of local ingredients or requirements of national law, while this distinction is clear and comprehensively marked so as to be immediately visible to the consumer.'

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 6 b (new)

Directive 2005/29/EC

Annex I – point 23 a (new)

Text proposed by the Commission

Amendment

(6b) *In Annex I, the following point is inserted:*

'23a. Using different techniques that allow buying event tickets at large scale, including through automated software, to resell event tickets for more than their face value.'

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 6 c (new)

Directive 2005/29/EC

Annex I – point 23 b (new)

Text proposed by the Commission

Amendment

(6c) *In Annex I, the following point is*

inserted:

'23b. Stating or otherwise creating the impression that a review of a product is submitted by a consumer who has actually used the product without taking reasonable and proportionate steps to ensure that that review reflects real consumers' experiences.'

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 6 d (new)

Directive 2005/29/EC

Annex I – point 23 c (new)

Text proposed by the Commission

Amendment

(6d) In Annex I, the following point is inserted:

'23c. Creating the false impression that other consumers purchased, used or recommended a specific product, service or digital content based on unrelated parameters including brand preferences and geographical location.'

Justification

Consumers increasingly rely on consumers' reviews and recommendations when making a purchasing decision. The Annex I should therefore be amended to include such misleading practice.

Amendment 56

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point d

Directive 2011/83/EU

Article 2 – paragraph 1 – point 16

Text proposed by the Commission

Amendment

(16) 'contract for the supply of digital content **which is not supplied on tangible medium**' means a contract under which a

(16) 'contract for the supply of digital content means a contract under which a trader supplies or undertakes to supply

trader supplies or undertakes to supply **specific** digital content to the consumer and the consumer pays or undertakes to pay **the price thereof**. This also includes contracts where the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for **the purpose of** supplying the digital content, or for the trader to comply with legal requirements to which the trader is subject, and the trader does not process this data for any other purpose;

digital content to the consumer and the consumer pays or undertakes to pay **a price**. This also includes contracts where the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital content **in accordance with [Digital Content Directive]**, or for the trader to comply with legal requirements to which the trader is subject, and the trader does not process this data for any other purpose;

Amendment 57

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point d

Directive 2011/83/EU

Article 2 – paragraph 1 – point 17

Text proposed by the Commission

(17) ‘digital service’ means (a) a service **allowing** the consumer **the creation, processing or storage of**, or access **to**, data in digital form; or (b) a service **allowing** the sharing of or any other interaction with data in digital form uploaded or created by the consumer **and** other users of that service, **including video and audio sharing and other file hosting, word processing or games offered in the cloud computing environment and social media**.

Amendment

(17) ‘digital service’ means (a) a service **that allows** the consumer **to create, store** or access data in digital form; or (b) a service **that allows** the sharing of or any other interaction with data in digital form uploaded or created by the consumer **or** other users of that service.

Amendment 58

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point d

Directive 2011/83/EU

Article 2 – paragraph 1 – point 18

Text proposed by the Commission

(18) ‘digital service contract’ means a contract under which a trader supplies or undertakes to supply a digital service to the

Amendment

(18) ‘digital service contract’ means a contract under which a trader supplies or undertakes to supply a digital service to the

consumer and the consumer pays or undertakes to pay *the price thereof*. This also includes contracts where the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for *the purpose of* supplying the digital service, or for the trader to comply with legal requirements to which the trader is subject, and the trader does not process this data for any other purpose;

consumer and the consumer pays or undertakes to pay *a price*. This also includes contracts where the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital service *in accordance with [Digital Content Directive]*, or for the trader to comply with legal requirements to which the trader is subject, and the trader does not process this data for any other purpose;

Amendment 59

Proposal for a directive

Article 2 – paragraph 1 – point 1 a (new)

Directive 2011/83/EU

Article 3 – paragraph 3 – point k

Present text

(k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22;

Amendment

(1a) In Article 3(3), point (k) is replaced by the following:

“(k) for passenger transport services, with the exception of Article 8(2) and Articles 19, **21** and 22;”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0083&qid=1537797342987&from=EN>)

Justification

This amendment is necessary for the logical consistency of the text and since it is directly linked to other admissible amendments.

Amendment 60

Proposal for a directive

Article 2 – paragraph 1 – point 2

Directive 2011/83/EU

Article 5 – paragraph 1 – point h

Text proposed by the Commission

(h) where applicable, any relevant interoperability of digital content and digital services with hardware **and** software **that the trader is aware of or can reasonably be expected to have been aware of**.

Amendment

(h) where applicable, any relevant interoperability of digital content and digital services with hardware **or** software **different from the ones with which digital content or digital services of the same type are normally used**.

Amendment 61

Proposal for a directive

Article 2 – paragraph 1 – point 3

Directive 2011/83/EU

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) the geographical address at which the trader is established as well as the trader's telephone number, e-mail address **or** other means of online communication which guarantee that the consumer can keep **the** correspondence with the trader on a durable medium, to enable the consumer to contact the trader quickly and communicate with him efficiently. Where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting.

Amendment

(c) the geographical address at which the trader is established as well as the trader's telephone number, e-mail address **and** other means of online communication, **where available**, which guarantee that the consumer can keep **a log of contact with the trader and retain copies of the written** correspondence with the trader on a durable medium, to enable the consumer to contact the trader quickly and communicate with him efficiently. Where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting.

Amendment 62

Proposal for a directive

Article 2 – paragraph 1 – point 3

Directive 2011/83/EU

Article 6 – paragraph 1 – point s

Text proposed by the Commission

(s) where applicable, any relevant interoperability of digital content and digital services with hardware **and** software **that the trader is aware of or can**

Amendment

(s) where applicable, any relevant interoperability of digital content and digital services with hardware **or** software **different from the ones with which digital**

reasonably be expected to have been aware of.

content or digital services of the same type are normally used.

Amendment 63

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU

Article 6a – paragraph 1 – introductory part

Text proposed by the Commission

Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:

Amendment

Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall, ***without prejudice to the provisions of Directive 2005/29/EC***, in addition provide the following information ***in a clear and user-friendly manner***:

Amendment 64

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU

Article 6a – paragraph 1 – point a

Text proposed by the Commission

(a) the main parameters determining ranking of offers presented to the consumer as result of his search query on the online marketplace;

Amendment

deleted

Amendment 65

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU

Article 6a – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) whether and how algorithms or automated decision making were used, to present offers or determine prices,

including personalised pricing techniques.

Amendment 66

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU

Article 6a – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) the calculation basis for any price reduction for the product or service shown in the search query on the online marketplace;

Justification

Discounted prices offered on online marketplaces for travel for example often do not exist with regard to the specific dates the consumer is looking for. Accurate information on price reductions should therefore be provided in the search results of online marketplaces.

Amendment 67

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU

Article 6a – paragraph 1 – point d c (new)

Text proposed by the Commission

Amendment

(dc) the official classification, categorisation or quality grade of a product, where applicable.

Justification

In some sectors, there are official classification schemes (for example the hotel star system in the travel sector). Online marketplaces should indicate the official classification of a product or service, where applicable.

Amendment 68

Proposal for a directive

Article 2 – paragraph 1 – point 4

Directive 2011/83/EU
Article 6a – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may maintain or introduce in their national law additional information requirements.

Amendment 69

Proposal for a directive
Article 2 – paragraph 1 – point 4
Directive 2011/83/EU
Article 6a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

After the consumer is bound by a distance or off-premises contract, or any corresponding offer, on an online marketplace, and where the offer for the good or service that has been sold was notified to and removed by the online marketplace on grounds that it is illegal, the online marketplace shall promptly provide the following information to the consumer in a clear and comprehensible manner:

- (a) that the product or service sold or the offer thereof is illegal or apparently illegal and was removed;***
- (b) the identity of the trader that placed the offer, which was removed;***
- (c) the reason why the offer was removed.***

Justification

Online marketplaces realizing that a given offer, product or service on their platform is illegal, should inform consumers about the potential illegality of the offer, product or service they have bought. Such an obligation would offer better protection to consumers, through increased transparency.

Amendment 70

Proposal for a directive

Article 2 – paragraph 1 – point 4 a (new)

Directive 2011/83/EU

Article 6 b (new)

Text proposed by the Commission

Amendment

(4a) The following Article is inserted:

“Article 6b

Monitoring requirements for online marketplace operators

Online marketplace operators shall be obliged to take reasonable steps to ensure that the services they provide are not subject to misuse, leaving consumers vulnerable. There shall be an adequate level of protection consistent with the nature of the goods or services sold and any actual evidence of harm arising from the sale. Specifically, operators shall monitor activity which suggests that a trader is purporting to be a non-trader in order to influence consumers’ choices and expectations of the quality of the product or service they are purchasing.”

Amendment 71

Proposal for a directive

Article 2 – paragraph 1 – point -5 (new)

Directive 2011/83/EU

Article 7 – paragraph 1

Present text

Amendment

1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on ***paper or, if the consumer agrees, on another*** durable medium. That information shall be legible and in plain, intelligible language.

(-5) In Article 7, paragraph 1 is replaced by the following:

“1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on ***a*** durable medium. That information shall be legible and in plain, intelligible language.”

Justification

This amendment is needed in view of the internal logic of the text and because it is inextricably linked to other admissible amendments. In the digital era, there is no need to stipulate that all information needs to be given on paper by default.

Amendment 72

Proposal for a directive

Article 2 – paragraph 1 – point -5 a (new)

Directive 2011/83/EU

Article 7 – paragraph 2

Present text

2. The trader shall provide the consumer with a copy of the signed contract ***or the confirmation of the contract on paper or, if the consumer agrees, on another*** durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.

Amendment

(-5a) In Article 7, paragraph 2 is replaced by the following:

“2. The trader shall provide the consumer with a copy of the signed contract ***on a*** durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgement in accordance with point (m) of Article 16.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&from=EN>)

Justification

This amendment is needed in view of the internal logic of the text and because it is inextricably linked to other admissible amendments. In the digital era, there is no need to stipulate that all information needs to be given on paper by default

Amendment 73

Proposal for a directive

Article 2 – paragraph 1 – point 7 – point a

Directive 2011/83/EU

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

(a) paragraph 3 is replaced by the following:

deleted

‘3. Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back.’

Amendment 74

Proposal for a directive

Article 2 – paragraph 1 – point 7 – point b

Directive 2011/83/EU

Article 13 – paragraph 5

Text proposed by the Commission

Amendment

5. In respect of any digital content to the extent that it does not constitute personal data, which was **uploaded** or created by the consumer when using the digital content or digital service supplied by the trader the trader shall comply with the obligations and can exercise the rights provided under [Digital Content Directive].

5. In respect of any digital content to the extent that it does not constitute personal data, which was **provided** or created by the consumer when using the digital content or digital service supplied by the trader the trader shall comply with the obligations and can exercise the rights provided under [Digital Content Directive].

Amendment 75

Proposal for a directive

Article 2 – paragraph 1 – point 8 – point 1

Directive 2011/83/EU

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

(1) paragraph 2 is replaced by the following:

deleted

‘After the termination of the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties.’

Amendment 76

Proposal for a directive

Article 2 – paragraph 1 – point 8 – point 1 a (new)

Directive 2011/83/EU

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(1a) The following paragraph is inserted:

‘2a. After the termination of the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties.’

(see amendment relating to Article 14(2) of Directive 2011/83/EU)

Amendment 77

Proposal for a directive

Article 2 – paragraph 1 – point 9 – point 1 a (new)

Directive 2011/83/EU

Article 16 – paragraph 1 – point b

Present text

Amendment

(b) the supply of goods *or* services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;

(1a) In paragraph 1, point (b) is replaced by the following:

‘(b) the supply of goods, services *or non-network energy* for which the price is dependent on fluctuations in the financial market, *commodity market or energy market* which cannot be controlled by the trader and which may occur within the withdrawal period;’

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0083&qid=1537955310239&from=FR>)

Justification

This amendment is made necessary by the internal logic of the text, and because it is inextricably linked to other admissible amendments.

Amendment 78

Proposal for a directive

Article 2 – paragraph 1 – point 9 – point 1 b (new)

Directive 2011/83/EU

Article 16 – paragraph 1 – point h

Present text

(h) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

Amendment

(1b) In paragraph 1, point (h) is replaced by the following:

‘(h) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance ***or performing other urgent services required at short notice***. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;’

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0083&qid=1537446850688&from=EN>)

Justification

This amendment is made necessary by the internal logic of the text, and because it is inextricably linked to other admissible amendments.

Amendment 79

Proposal for a directive

Article 2 – paragraph 1 – point 9 – point 3

Directive 2011/83/EU

Article 16 – paragraph 1 – point n

Text proposed by the Commission

(3) the following point is added:
‘(n) the supply of goods that the consumer has handled, during the right of withdrawal period, other than what is necessary to establish the nature,

Amendment

deleted

characteristics and functioning of the goods.'

Amendment 80

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 2 – point b

Text proposed by the Commission

(b) the number of consumers ***affected, including those in other Member State(s);***

Amendment

(b) the number of consumers ***who have suffered damage in the Member State concerned and in other Member States, where such information is made available in accordance with Article 35 of Regulation (EU) 2017/2394;***

Amendment 81

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 2 – point c

Text proposed by the Commission

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers;

Amendment

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers, ***including actions taken by the trader to report the infringement or to cooperate with the competent courts or administrative authorities;***

Amendment 82

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 2 – point d

Text proposed by the Commission

(d) ***where appropriate,*** the intentional

Amendment

(d) the intentional or negligent

or negligent character of the infringement;

character of the infringement;

Amendment 83

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) whether the trader claim that they complied with relevant codes of conduct or qualifications;

Amendment 84

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall exercise the powers laid down in this Article proportionately, efficiently and effectively in accordance with Union law, including in accordance with the principles of the Charter of Fundamental Rights of the European Union, applicable procedural safeguards and the Union rules on data protection, in particular Regulation (EU) 2016/679, and national law.

Amendment 85

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the penalty to be imposed is a fine, the infringing trader's annual

3. Any fines imposed for the same infringements of this Directive in other

turnover and net profits as well as any fines imposed for the same **or other** infringements of this Directive in other Member States shall also be taken into account in the determination of **its amount**.

Member States shall also be taken into account in the determination of **the level of penalty**.

Amendment 86

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension **within the meaning of** Regulation (EU) **No 2017/2934** include the possibility to impose fines, the maximum amount of which shall be at least 4 % of the trader's annual turnover in the Member State or Member States concerned.

Amendment

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension **to be imposed as a result of a coordinated action launched in accordance with Chapter IV** of Regulation (EU) **2017/2394** include the possibility to impose fines, **and that** the maximum amount of which shall be **10 000 000 EUR or** at least 4 % of the trader's annual turnover **of the previous financial year** in the Member State or Member States concerned, **whichever is higher**.

Amendment 87

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 5

Text proposed by the Commission

5. **When deciding about the allocation of** revenues from fines **Member States shall take into account** the general interest of consumers.

Amendment

5. **Member States shall use** revenues from fines **to enhance the protection of the** general interest of consumers, **including through the establishment of a fund dedicated to providing redress in cases of harm suffered by consumers, and, where applicable, in cases of other harms, such as harm to environmental interests or harm to other protected public interests,**

resulting the infringement.

Amendment 88

Proposal for a directive

Article 2 – paragraph 1 – point 10

Directive 2011/83/EU

Article 24 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall not be required to establish a comprehensive system of public enforcement in order to enforce penalties under this Directive.

Amendment 89

Proposal for a directive

Article 2 – paragraph 1 – point 11 – point 1 – point a

Directive 2011/83/EU

Annex I – point A

Text proposed by the Commission

Amendment

(a) the third paragraph of point A under "Right of withdrawal" is replaced by the following: *deleted*

'To exercise the right of withdrawal, you must inform us [2] of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post or e-mail). You may use the attached model withdrawal form, but it is not obligatory. [3]'

Amendment 90

Proposal for a directive

Article 2 – paragraph 1 – point 11 – point 1 – point c

Directive 2011/83/EU

Annex I – point 4

Text proposed by the Commission

Amendment

(c) point 4 under "Instructions for completion" is replaced by the following: *deleted*

‘ [4.] In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: ‘We may withhold reimbursement until we have received the goods back.’ ’

Amendment 91

Proposal for a directive

Article 2 – paragraph 1 – point 11 – point 1 – point d

Directive 2011/83/EU

Annex I – point 5 – subpoint c

Text proposed by the Commission

Amendment

(d) Subpoint (c) of point 5 under "Instructions for completion" is deleted. *deleted*

Amendment 92

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the number of consumers *affected, including those in other* Member State(s);

(b) the number of consumers *who have suffered damage in the* Member State concerned and in other Member States, where such information is made available in accordance with Article 35 of Regulation (EU) 2017/2394;

(The reference in the header relating to an amended act (Article 8b – paragraph 2 – point b) corresponds to Article 8b – paragraph 2 – point c of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 93

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers;

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers, ***including actions taken by the trader to report the infringement or to cooperate with the competent courts or administrative authorities;***

(The reference in the header relating to an amended act (Article 8b – paragraph 2 – point c) corresponds to Article 8b – paragraph 2 – point d of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 94

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) ***where appropriate***, the intentional or negligent character of the infringement;

(d) the intentional or negligent character of the infringement;

(The reference in the header relating to an amended act (Article 8b – paragraph 2 – point d) corresponds to Article 8b – paragraph 2 – point e of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 95

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) whether the trader claim that they complied with relevant codes of conduct

or qualifications;

Amendment 96

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall exercise the powers laid down in this Article proportionately, efficiently and effectively in accordance with Union law, including in accordance with the principles of the Charter of Fundamental Rights of the European Union, applicable procedural safeguards and the Union rules on data protection, in particular Regulation (EU) 2016/679, and national law.

Amendment 97

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 3

Text proposed by the Commission

Amendment

3. Where the penalty to be imposed is a fine, the infringing trader's annual turnover and net profits as well as any fines imposed for the same or other infringements of this Directive in other Member States shall also be taken into account in the determination of *its amount*.

3. Any fines imposed for the same infringements of this Directive in other Member States shall also be taken into account in the determination of ***the level of penalty***.

Amendment 98

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension *within the meaning of* Regulation (EU) *No 2017/2934* include the possibility to impose fines, the maximum amount of which shall be at least 4 % of the trader's annual turnover in the Member State or Member States concerned.

Amendment

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension *to be imposed as a result of a coordinated action launched in accordance with Chapter IV* of Regulation (EU) *2017/2394* include the possibility to impose fines, *and that* the maximum amount of which shall be *10 000 000 EUR or* at least 4 % of the trader's annual turnover *of the previous financial year* in the Member State or Member States concerned, *whichever is higher*.

Amendment 99

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 5

Text proposed by the Commission

5. *When deciding about the allocation of* revenues from fines *Member States shall take into account* the general interest of consumers.

Amendment

5. *Member States shall use* revenues from fines *to enhance the protection of the* general interest of consumers, *including through the establishment of a fund dedicated to providing redress in cases of harm suffered by consumers, and, where applicable, in cases of other harms, such as harm to environmental interests or harm to other protected public interests, resulting the infringement*.

Amendment 100

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Directive 93/13/EEC

Article 8b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall not be required to establish a comprehensive system of public enforcement in order to enforce penalties under this Directive.

Amendment 101

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the number of consumers ***affected, including those in other Member State(s);***

(b) the number of consumers ***who have suffered damage in the Member State concerned and in other Member States, where such information is made available in accordance with Article 35 of Regulation (EU) 2017/2394;***

(The reference in the header relating to an amended act (Article 8 – paragraph 2 – point b) corresponds to Article 8 – paragraph 2 – point j of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 102

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers;

(c) any action taken by the trader to mitigate or remedy the damage suffered by consumers, ***including actions taken by the trader to report the infringement or to cooperate with the competent courts or administrative authorities;***

(The reference in the header relating to an amended act (Article 8 – paragraph 2 – point c) corresponds to Article 8 – paragraph 2 – point k of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 103

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) ***where appropriate***, the intentional or negligent character of the infringement;

(d) the intentional or negligent character of the infringement;

(The reference in the header relating to an amended act (Article 8 – paragraph 2 – point d) corresponds to Article 8 – paragraph 2 – point l of the Commission's proposal. This discrepancy is caused by the incorrect numbering in the Commission's proposal in the EN.)

Amendment 104

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) whether the trader claim that they complied with relevant codes of conduct or qualifications;

Amendment 105

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall exercise the powers laid down in this Article proportionately, efficiently and effectively in accordance with Union law, including in accordance with the principles of the Charter of Fundamental Rights of the European Union, applicable procedural

Amendment 106

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 3

Text proposed by the Commission

3. ***Where the penalty to be imposed is a fine, the infringing trader's annual turnover and net profits as well as*** any fines imposed for the same ***or other*** infringements of this Directive in other Member States shall also be taken into account in the determination of ***its amount***.

Amendment

3. Any fines imposed for the same infringements of this Directive in other Member States shall also be taken into account in the determination of ***the level of penalty***.

Amendment 107

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension ***within the meaning of*** Regulation (EU) ***No 2017/2934*** include the possibility to impose fines, the maximum amount of which shall be at least 4 % of the trader's annual turnover in the Member State or Member States concerned.

Amendment

4. Member States shall ensure that the penalties for widespread infringements and widespread infringements with a Union dimension ***to be imposed as a result of a coordinated action launched in accordance with Chapter IV*** of Regulation (EU) ***2017/2394*** include the possibility to impose fines, ***and that*** the maximum amount of which shall be ***10 000 000 EUR*** ***or*** at least 4 % of the trader's annual turnover ***of the previous financial year*** in the Member State or Member States concerned, ***whichever is higher***.

Amendment 108

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 5

Text proposed by the Commission

5. *When deciding about the allocation of revenues from fines Member States shall take into account the general interest of consumers.*

Amendment

5. *Member States shall use revenues from fines to enhance the protection of the general interest of consumers, including through the establishment of a fund dedicated to providing redress in cases of harm suffered by consumers, and, where applicable, in cases of other harms, such as harm to environmental interests or harm to other protected public interests, resulting the infringement.*

Amendment 109

Proposal for a directive

Article 4 – paragraph 1 –subparagraph 1

Directive 98/6/EC

Article 8 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. *Member States shall not be required to establish a comprehensive system of public enforcement in order to enforce penalties under this Directive.*

Amendment 110

Proposal for a directive

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

European Consumer Rights Application

1. *By 1 January 2021, the Commission shall develop a mobile application to serve as a point of entry for*

citizens seeking information on their consumer rights and for consumers seeking out-of-court resolution of disputes covered by Regulation (EU) No 524/2013 and support in complaints through the European Consumer Centres Network.

2. The mobile application referred to in paragraph 1 shall have the following functions:

(a) to provide a model electronic complaint form which can be filled in by the consumer;

(b) to submit the completed complaint form to the ODR platform established under Regulation (EU) No 524/2013 or to the competent European Consumer Centre, based upon the parties involved;

(c) to provide accurate and up-to-date information in a clear, understandable and easily accessible way on consumer rights and guarantees related to buying goods and services.

EXPLANATORY STATEMENT

The rapporteur believes that in many areas the Commission proposal stands as a good basis, introducing satisfactory reforms following the outcome of the REFIT exercise.

The draft report therefore does not propose many significant changes away from the Commission's initial approach, aside from one of the most contentious issues: changes to the right of withdrawal.

The rapporteur understands and is sympathetic to the need to find a balance between the rights afforded to consumers and the expectations then made of businesses. In the case of the right of withdrawal, there are examples of how the existing right has been abused by a minority of consumers. This can be challenging for small businesses and the rapporteur remains open to alternative mitigations that may be introduced for them.

Nevertheless, the proposal made by the Commission sends a negative signal to consumers and in the rapporteur's view undermines the case for growth in ecommerce. As we move ahead with the Digital Single Market strategy, the rapporteur believes that we also must ensure that the legislative foundations elsewhere support citizens and business as they move online. In this area in particular, the sale of goods online is facilitated by the ability of consumers to exercise the right of withdrawal simply and easily. Any shift in roles risks deterring purchases from the online sales channel, which the rapporteur believes would be worse for all parties.

Regarding penalties, the rapporteur proposes several amendments for clarity's sake. In particular, the rapporteur proposes to reflect in the articles more clearly the position expressed in the recitals regarding when a turnover based fine may be imposed. In the relevant articles this is not clearly tied to occasions where there has been a successful action under the CPC Regulation and so this is now made explicit.

The rapporteur also proposes to develop the Commission's thinking on how to ensure penalties are used to promote the interests of consumers. In the rapporteur's view, penalties are often only tangentially – if at all – to the benefit of the persons who suffered harm. Taking a current example, owners of affected Volkswagens may not see any difference if a fine is levied by one national government or not, nor necessarily would the environmental harm be remedied directly as a result of the fine. The rapporteur therefore proposes to more clearly link the revenues from fines to concrete action to support affected consumers.

The rapporteur proposes some new clarifications on the provisions related to unsolicited visits and commercial excursions, to better frame the conditions under which Member States may choose to introduce restrictions. It should be clear that this is not a discussion on the merits or demerits of doorstep selling per se, but rather a targeted provision to address cases of aggressive or misleading practices that can occur.

With regard to dual quality of goods, the rapporteur has taken careful note of the preliminary outcome of the own initiative report on dual quality of goods in the IMCO Committee. There it was noted that some of the Commission's proposals could be improved; however the report did not make any concrete recommendations as to the improvements themselves. The rapporteur considers that the text could be improved through stronger reference to European-wide methodologies and this change is introduced in the recitals.

Concerning transparency obligations for online marketplaces, the rapporteur introduces two clarifications.

The first relates to adverts appearing within search results. The rapporteur agrees with the

Commission that this should be clarified; however there are occasions where “payments made” would be one of the criteria for ranking search results. In these cases, the payment is not the dominant parameter and so it does not seem appropriate that these be treated in the same way as paid adverts. In the case of the advert, the payment ensures that for certain keywords the advert will appear on the page regardless of the workings of the marketplace’s algorithm. The rapporteur’s proposal aims to capture the latter example, which he understands also to be the Commission’s aim.

The second clarification introduced is in relation to the summary to be provided by the online marketplace of their main parameters driving their search result ranking. Here the rapporteur believes brevity to be a virtue. Information that is made available for consumers should be easy to understand and apply to what they are seeing on the screen. It is not hugely beneficial for the consumer to be presented with twelve pages of description about how the search engine might work, particularly if they are trying to check out in a hurry. Similarly, the consumer typically has the option to reformulate the search results as they wish through filters and reordering tools on the website. The rapporteur therefore thinks it sufficient that online marketplaces list those main parameters and that a detailed description would be unnecessary.

Finally, the rapporteur has introduced a proposal related to the functioning of the ODR platform and the work of the European Consumer Centres. The rapporteur believes that the visibility and exercise of consumer rights could be supported through the introduction of a mobile application. The app would serve two purposes: (a) to act as an easy reference point for consumers looking to understand and apply their consumer rights; and (b) to serve as a second point of entry to the dispute resolution and assistance services offered by the ODR platform and the European Consumer Centres. The app would not carry out any back-end functions beyond directing complaints to the appropriate entity; however for many consumers these systems and services are not well known and so this “signposting and directing” service would represent an added value to them.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Better enforcement and modernisation of EU consumer protection rules			
References	COM(2018)0185 – C8-0143/2018 – 2018/0090(COD)			
Date submitted to Parliament	11.4.2018			
Committee responsible Date announced in plenary	IMCO 2.5.2018			
Committees asked for opinions Date announced in plenary	ECON 2.5.2018	ENVI 2.5.2018	JURI 2.5.2018	
Not delivering opinions Date of decision	ECON 31.5.2018	ENVI 16.5.2018	JURI 23.4.2018	
Rapporteurs Date appointed	Daniel Dalton 16.5.2018			
Discussed in committee	11.7.2018	3.9.2018	10.10.2018	21.11.2018
Date adopted	22.1.2019			
Result of final vote	+: -: 0:	37 1 1		
Members present for the final vote	John Stuart Agnew, Pascal Arimont, Dita Charanzová, Carlos Coelho, Lara Comi, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Evelyne Gebhardt, Maria Grapini, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Philippe Juvin, Morten Løkkegaard, Eva Maydell, Marlene Mizzi, Nosheena Mobarik, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Mihai Țurcanu, Anneleen Van Bossuyt, Marco Zullo			
Substitutes present for the final vote	Biljana Borzan, Edward Czesak, Martin Schirdewan, Adam Szejnfeld, Josef Weidenholzer			
Substitutes under Rule 200(2) present for the final vote	David Borrelli			
Date tabled	28.1.2019			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

37	+
ALDE	Dita Charanzová, Morten Løkkegaard, Jasenko Selimovic
ECR	Edward Czesak, Daniel Dalton, Nosheena Mobarik, Anneleen Van Bossuyt
EFDD	Marco Zullo
ENF	Mylène Troszczynski
GUE/NGL	Dennis de Jong, Martin Schirdewan
NI	David Borrelli
PPE	Pascal Arimont, Carlos Coelho, Lara Comi, Anna Maria Corazza Bildt, Philippe Juvin, Eva Maydell, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Mihai Țurcanu
S&D	Biljana Borzan, Nicola Danti, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Marlene Mizzi, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Josef Weidenholzer
VERTS/ALE	Pascal Durand, Igor Šoltés

1	-
ENF	John Stuart Agnew

1	0
EFDD	Robert Jarosław Iwaszkiewicz

Key to symbols:

+ : in favour

- : against

0 : abstention