



13.8.2021

## NOTICE TO MEMBERS

**Subject: Petition No 0025/2021 by Constantin Bausback (French) on amendment of Article 22 of the Consumer Rights Directive 2011/83/EU to exclude not-for-profit additional payments of the scope of the obligation of prior consent of the customer**

### 1. Summary of petition

The petitioner asks the amendment of the Article 22 of the Consumers Rights Directive to exclude of its scope the extra payments that intend to increase social benefit / reduce or compensate environmental impacts in direct relation of the goods and services offered by the retailer. Article 22 of the Consumer Rights Directive requires that the trader seek the express consent of the consumer before charging any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation. The change suggested by the petitioner would mean in practice that the trader could charge extra payments to the consumer without his express consent if they are not-for-profit for the trader and that their aim is to increase social benefit, reduce or compensate environmental impacts.

### 2. Admissibility

Declared admissible on 23 April 2021. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 13 August 2021

Under the Consumers Rights Directive 2011/83/EU (CRD)<sup>1</sup>, traders must inform consumers of

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<sup>1</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, *OJ L 304, 22.11.2011, p. 64–88*.

the full price, including all applicable taxes, duties, charges and any other costs before the consumer is bound by a distance or off-premises contract, a contract concluded in a brick and mortar shop, or any corresponding offer. Where those charges cannot reasonably be calculated in advance, consumers must be informed about the fact that such additional charges may be payable.

Article 22 of the CRD requires traders to seek the express consent of consumers for any payment in addition to the remuneration agreed upon for the trader's main contractual obligation, before consumers are bound by a contract or an offer. Traders cannot use default options, e.g. pre-ticked boxes, which consumers have to reject in order to avoid the additional payments. Consumers are entitled to reimbursement of the additional payments if their express consent has not been duly obtained.

The price is, in principle, a determining factor for average consumers when they make purchase decisions<sup>2</sup>. The aim of Article 22 of the CRD is to protect consumers against hidden costs. Together with other EU consumer law requirements regarding price transparency<sup>3</sup> this rule contributes to ensuring that consumers make informed purchase decisions.

Regardless of the purpose of additional payments, the fundamental transparency requirements provided by EU consumer law remain applicable. Obviously, they do not prevent traders from using environmental benefits as a mean to promote their offers in full transparency and in compliance with these legal requirements. The EU is already taking policy measures to encourage traders and consumers to offer and consume sustainable products<sup>4</sup> and thus to contribute to a cleaner and more competitive Europe. However, pursuing these policy objectives cannot justify a decrease in the level of consumer protection.

## Conclusion

The Commission considers that the obligation of traders to seek the express consent of consumers for any extra payment, as provided for in Article 22 of the Consumers Rights Directive 2011/83/EU, is essential to protect consumers' economic interests regardless of the objective of such extra payments. The fundamental EU consumer protection rules requiring consumer consent and transparency of costs should apply in all circumstances.

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<sup>2</sup> See, for example, [Case C-611/14](#), Canal Digital Denmark A/S, paras 45-47.

<sup>3</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance), *OJ L 149*, 11.6.2005, p. 22–39.

<sup>4</sup> [Communication from the Commission — The European Green Deal](#), COM/2019/640 final.