

Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:
January
2022

New requirements for sellers. Are you ready for the Omnibus Directive?

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→ New requirements in respect to protection of consumer rights

Starting from 28 May 2022, all sellers and service providers in all European Union member states shall observe the new rules stemming from the Directive 2019/2161 of the European Parliament and of the Council amending various directives as regards the better enforcement and modernization of Union consumer protection rules (the Omnibus Directive). The purpose of the Omnibus Directive is to significantly enhance consumer rights protection, in particular, when consumers are purchasing products and services in online selling places (e-shops).

In order to implement the Omnibus Directive, amendments to the Regulations of the Cabinet of Ministers No.178 "Procedures for Indication of Prices of Products and Services" dated 18 May 1999 (Hereinafter – Regulations on Prices) have been adopted and, at the moment of preparation of this issue, amendments to the Consumer Rights Protection Law have been prepared for approval in the final reading. However, changes in another legal act – the Unfair Commercial Practices Prohibition Law – are still in the process of drawing up.

New requirements for selling online

One of the purposes of the Omnibus Directive is to increase transparency of online selling places. Accordingly sellers and service providers offering their products and services at e-shops shall comply with the following requirements:

- firstly, a consumer shall be informed if a price indicated in an online shop has been personalized;
- secondly, online selling places shall provide information if a higher placing of products or services in online search results are based on payments or other benefits made by third parties. In this regard the law introduces a new term – "ranking", which means a relative visibility of a product in a shop. A seller shall inform a customer about main parameters used for ranking products;
- thirdly, it shall be ensured that reviews and recommendations about products and services, if such are published, are provided by customers who have genuinely purchased these products or services;
- fourthly, an online trading platform shall provide a clear information about who is responsible for delivery of products and ensuring of revocation rights – a holder of the platform or a seller who uses the platform;
- fifthly, an online shop must clearly indicate if a seller or service provider is a private individual and as a consequence consumer rights enshrined in the law will not be applicable to any transaction.

According to the adopted amendments to the Regulations on Prices, sellers in their price reduction (discount) announcement shall, as a base (reference) price, indicate a price that had

been the lowest in the e-shop for a particular product in the last 30 days prior to the discount being publicized.

Introduction of these changes in operation of existing e-shops most likely will be related to a change of existing technical parameters and adapting of further commercial strategy of a seller or service provider. For this reason, we recommend performing of necessary adaptations now, even if the Latvian legislator is late with adoption of a final version of all changes to the legal acts.

Consumer rights and unfair commercial practices prohibition will also apply to free digital products

The amendments to the Consumer Rights Protection Law broaden the scope of consumer rights protection and the requirements of the law are now also extended to free digital products. Namely, the rules of consumer rights protection will apply also in cases when a consumer uses products with digital content (for instance, movies, music files etc.) or digital services (for instance, apps in phones, cloud storage etc.) "for free", that is, without any payment but in exchange for personal data. In contrast to many other countries, Latvian law ensured consumer protection, when purchasing digital products, even before these amendments.

Providers of such services shall provide consumers with such basic rights as clear information about a product or service, for instance, about characteristics of a product, duration of a contract and termination conditions, as well as provide revocation rights of 14 days. These conditions are not applicable if a service provider processes personal data provided by a consumer only with a purpose to deliver digital content or digital service or to comply with legal obligations.

It is expected that unfair commercial practice prohibition will also be applied to activities with digital products.

Restricting distribution of “dual-quality” products

Starting from 28 May 2022, offering of products with differing quality will be considered a misleading practice. Namely, it will be forbidden to offer a product in a EU member state indicating it as identical to a product sold in other member state, although there are differences in the products' content and characteristics.

Additional legal remedies for consumers

It is expected that the law will be supplemented with additional legal remedies for consumers in order to, as much as possible, quickly and effectively prevent influence of unfair commercial practice. Hence, as in case of inappropriate product or service, a consumer will have the rights to ask, for example, for a price reduction or cancel an agreement, or pursue compensation for damage if the consumer encounters unfair commercial practice.

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Up to now the law provided for a person, who has suffered damage as a result of unfair commercial practice, only the right to bring a claim to the court.

Significant changes in application of fines

In accordance with the Omnibus Directive, the amount of fines for an infringement of consumer rights, including, if it is done by unfair commercial practice, shall be at least up to 4 per cent of trader's annual turnover in a respective member state. In Latvia, fines for unfair commercial practice are much more severe – up to 10 per cent of preceding year's annual turnover, and it is not expected that the upper threshold of penalties will be reduced. Changes are planned in respect to the reference period of the penalty, as it will be set out that the penalty can be calculated from an average net turnover of one or multiple years.

It is expected that there will be additional criteria that authorities shall take into account when applying penalties, also, among others, if there have been similar infringements in other member states.

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