

New Deal for Consumers

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What is the New Deal for Consumers?

The EU currently has some of the strongest consumer protection rules in the world. Consumers can, for example, return products bought online within 14 days or have products repaired or replaced within a guarantee period. For businesses, these common rules across the EU foster consumer trust, which boosts trade and nurtures growth and jobs.

The Commission's New Deal for Consumers is a proposal that will guarantee that all European consumers fully benefit from their rights. It will also strengthen the public and private enforcement of these rules, ensuring that authorities have the power to impose deterrent sanctions and consumers can access compensation if their rights are breached.

Why is the Commission proposing the New Deal for Consumers?

The Juncker Commission has done a lot to adapt consumer rules to the fast moving marketplace:

- under the Digital Single Market Strategy, the Commission ended roaming charges and unjustified geoblocking, as well as ensuring cross-border portability of online content services;
- modernised the [Consumer Protection Cooperation Regulation](#) which will help enforce the existing consumer rules through better cooperation amongst national consumer authorities.

In 2017 the European Commission carried out a thorough evaluation of existing consumer rules. It showed that the current EU consumer legislation works well, but stressed that the rules were not applied and enforced effectively across the EU. There is also a need to raise awareness among consumers and businesses about their rights and obligations. The review identified targeted revisions to eliminate unnecessary costs for traders and to modernise the rules in the light of today's global trends and new business practices (see [press release](#)).

Recent cross-border consumer cases, such as the "Dieselgate" scandal which affected consumers all over the EU, have confirmed that European consumer law should be strengthened, for example by introducing collective redress systems.

This is why the European Commission is proposing the New Deal for Consumers. It will ensure that all European consumers fully benefit from their rights, by helping Member States to enforce existing rights better, and by modernising redress systems.

Which legislative proposals does the New Deal consist of?

Concretely, the New Deal for Consumers will update the following four existing Directives:

The New Deal also contains a legislative proposal replacing the current [Injunctions Directive](#), proposing representative actions for the collective interest of consumers. The proposal aims to improve tools for stopping illegal practices and facilitating redress for consumers where there are widespread infringements on their rights where many of them are victims of the same infringement of their rights in mass harm situation.

How will such representative actions work in practice?

Under the existing rules, a court or an administrative authority can put an end to illegal practices when a company does not respect its duties towards several consumers, without individual consumers being obliged to act.

Under the New Deal, it will also be possible for consumers to get redress, such as compensation or repair without any cost on their side, following a legal action to stop such illegal practices.

This is already the case in some Member States, but the New Deal introduces these rights across the EU. This will help individual consumers all over the EU to secure their rights, especially those who cannot afford to pursue redress or who shy away from individual litigation.

Who will act on behalf of consumers in representative actions?

Only qualified entities, such as consumer organisations and independent public bodies, designated by the EU Member States, will be able to bring representative actions for redress. These entities must be non-profit and will have to respect a number of criteria (see details below).

EU Member States will monitor on a regular basis whether the designated qualified entities continue to comply with the criteria. Failure to do so will lead to the loss of the status of qualified entity.

What are the features of representative action specific for the EU model? Will there be a risk of US style class actions?

No. Thanks to numerous safeguards, the EU representative actions will be different from the US style class action. We want a system that cannot be misused and that bring more fairness to consumers, not more business for law firms.

Under the EU representative actions system, qualified entities representing consumers will have strict obligations of transparency regarding the origin of the funds they use for their activity. This rule is a strong safeguard as it enables the court or authority to assess whether there may be a conflict of interest between any third party funder and the qualified entity. Such a conflict of interest could lead to abusive litigation for example between competitors as one company could use a qualified entity to launch a frivolous

action against another company.

Other safeguards are the following:

- only qualified entities (such as consumer organisations and independent public bodies) designated by the EU Member States according to strict criteria, including their non-profit making character and their legitimate interest in ensuring the provisions of relevant Union law are complied with, can bring representative actions for redress;
- representative actions for redress will be possible only based on a final decision of a national court or authority which establishes that the trader has breached the law. This can be for example a final injunction order or a final decision of a national enforcement authority. Thus, no frivolous claim can be brought;
- EU Member States will monitor on a regular basis whether the designated qualified entities continue to comply with the criteria. Failure to do so will lead to the loss of the status of qualified entity;
- no punitive damages should be awarded. Consumers will be compensated for the actual harm suffered.

The proposal introduces strong information obligations for the benefit of consumers, who will need in any case to be clearly informed about their rights and the modalities at their disposal to benefit from the redress awarded further to the representative action.

The proposal is principle-based and sets out a general framework for collective injunctions and redress, while respecting subsidiarity, the procedural autonomy and legal traditions of Member States. For example, the proposal leaves the freedom to Member States to choose between opt-in or opt-out systems in order to allow consumers to be represented by the action.

Will it be possible to organise one representative action on behalf of consumers from several EU countries?

Yes. Cross-border actions could become more efficient since it will be possible for qualified entities representing consumers from different Member States to join forces within a single representative action on behalf of consumers from those countries, making a joint case against a company on the same breach of consumer law.

What will happen if another mass harm case like the 'Dieselgate' scandal emerges in Europe where a product does not respect the relevant standards?

Should a Dieselgate-type scandal happen again, victims of unfair commercial practices, such as misleading advertising about environmental claims, by car manufacturers will be able to obtain remedies collectively through a representative action under this Directive even if the Union regulatory framework for type approval of vehicles is not covered as such by Annex I. This was not possible previously across the EU.

Why should there be stronger penalties for violations of EU consumer law?

The availability of effective and deterrent penalties is especially important for the good functioning of the enforcement co-operation in cross-border cases under the recently revised Consumer Protection Cooperation (CPC) Regulation.

The new CPC Regulation requires Member States to take enforcement measures, including fines, in a coordinated manner regarding widespread infringements and widespread infringements across the EU. This is clearly not possible with the current disparities amongst national rules on fines.

Currently, for example, in France, Poland and the Netherlands, fines for misleading the consumers (infringing the Unfair Commercial Practices Directive) may reach 10% of a company's annual turnover. In contrast, fines for similar breaches of EU consumer law are capped at € 8,688 in Lithuania, € 13,157 in Croatia and € 32,000 in Estonia.

How will new penalties for violations of EU consumer law work in practice?

Under the proposal, national authorities will have the power to impose effective, proportionate and dissuasive penalties in a coordinated manner.

For widespread infringements that affect consumers in several EU Member States, the available maximum fine will be at least 4% of the trader's annual turnover in the respective Member State. Member States are free to provide for higher maximum fines.

The actual level of penalties in a case will have to be determined by the relevant national authority, taking into account aggravating and alleviating factors set out in the updated directives.

Who will enforce the new rules under the New Deal for Consumers?

Consumer protection authorities and courts in the EU countries will enforce the rules provided in the proposals of the New Deal. This is the same way EU consumer law is enforced today. The European Commission does not have powers to intervene in concrete disputes between traders and consumers.

How will the New Deal support consumers to fully enjoy their rights in the Digital Single Market?

The new Deal for consumers gives the right tools to support enforcement of our consumer legislation in particular much has already been achieved in the last years to improve consumer rights and certainty to business in area such as cross-border portability of content, roaming charges and geoblocking as well as the energy sector. This now needs to be fully implemented.

What is the Commission doing to tackle the dual quality of food issue?

In September 2017, the Commission issued [guidelines](#) on the application of EU food and consumer laws to dual quality products. The guidance will help national authorities to determine whether a company is breaking EU laws when selling products of dual quality in different countries.

Following up on these guidelines, the New Deal for Consumers will update the Unfair Commercial Practices Directive in order to make explicit that, it may be illegal to market products as being identical in several EU countries, if their composition is significantly different. Business operators are free to market and sell goods with different composition or characteristics, tailoring their products to local consumer preferences or taking into account the need to respond to different trends. Products under the same brand may exceptionally have different characteristics. However, a substantially different composition in identically branded goods can be a source of concern when those products are marketed in a way that has the potential to mislead the consumer.

In parallel, the Commission's Joint Research Centre, with the support of more than half of the EU Member States and a wide range of stakeholders' organisations, is also currently finalising a common testing methodology and will coordinate a testing campaign focussed on food products in May 2018. This work will be key in helping national authorities to enforce EU rules.