

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 18-4377

19 November 2018

### SUBCOMMITTEE IV FLANKING AND HORIZONTAL POLICIES

#### EEA EFTA Comment

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

#### 1. EXECUTIVE SUMMARY

- The EEA EFTA States – Iceland Liechtenstein and Norway – support the proposed approximation of national rules on penalties for infringements of EU consumer law. However, decisions related to the allocation of revenues from fines should be addressed at national level. Notably, provisions on the allocation of revenues from fines would appear to fall outside the scope of the EEA Agreement and they would therefore like to point out that this EEA EFTA Comment is without prejudice to the question of EEA relevance regarding this provision of the proposal.
- The EEA EFTA States support introducing rights to remedies for consumers harmed by unfair commercial practices and take this opportunity to suggest wording to clarify the text of the Directive so that a hierarchy of remedies can be decided at national level.
- The EEA EFTA States are concerned about the proposal to limit the right to withdraw from online and off-premises contracts. This could be perceived as lowering the level of consumer protection in the internal market. They have noted that the European Commission has not provided sufficient data to substantiate that the current rules are disproportionately burdensome for traders.

- The EEA EFTA States agree that there is a need to update parts of the consumer acquis for the Digital Single Market. They support the proposed rules for online marketplaces, hidden marketing in online search engines and free digital services. At the same time, they suggest extending the scope of some of the proposed information requirements for online marketplaces, so that they also become applicable at marketing stage. They also recommend broadening the ban on hidden marketing to include digital channels other than search engines, notably social media and blogs.

## **2. COMMENTS ON SPECIFIC PARTS OF THE PROPOSAL**

### **Approximation of criteria for penalties**

1. The EEA EFTA States support the proposal to introduce more effective, proportionate and dissuasive penalties for infringements of EU consumer law.
2. They agree that national authorities should decide on the level of penalties based on common parameters. They also agree that penalties for widespread infringements should include the possibility to impose fines up to 4% of the trader's annual turnover, and that it should be possible to go beyond this percentage at national level.
3. The EEA EFTA States hold the opinion that the above-mentioned proposals can contribute to more dissuasive penalties, which can, in turn, lead to fewer infringements and a higher level of consumer protection. In addition, the proposed approximation of national rules can contribute to greater legal certainty for cross-border traders.
4. On the other hand, the EEA EFTA States believe that decisions related to the allocation of revenues from fines is a matter to be addressed at national level. As a consequence they cannot support the proposal to set out in provisions of European law that "the general interest of consumers" should be taken into account when deciding on the allocation of revenues. In particular, they would like to point out that provisions on the allocation of revenues would appear to fall outside the scope of the EEA Agreement, and they would therefore like to point out that this EEA EFTA Comment is without prejudice to the question of EEA relevance regarding this provision of the proposal.

### **Individual remedies for consumers harmed by unfair commercial practices**

5. The EEA EFTA States support the proposal to introduce rights to individual remedies for consumers harmed by unfair commercial practices. They believe that codifying national rules on remedies falling within the scope of the Unfair Commercial Practices Directive can make the remedies more easily
6. available for consumers and provide greater legal certainty for traders.
7. While supporting the proposal to ensure rights to individual remedies through a minimum harmonization approach, they note that the proposed provisions would have benefitted from a higher level of precision. In particular, the EEA EFTA States would have preferred the text of the proposal to be clearer regards the possibility of deciding at national level whether there should be a hierarchy of remedies or not.

8. Concretely, such increased precision could be achieved by adding a fourth paragraph to the proposed new Article 11a of Directive 2005/29/EC, which could read: "*Member States retain the possibility to decide at national level whether other remedies in addition to the ones mentioned in paragraphs 2 and 3 should be made available for consumers harmed by unfair commercial practices, and whether there should be a hierarchy of such remedies.*"

#### **Amendments to the right of withdrawal**

9. The EEA EFTA States are concerned about the proposal to limit consumers' right to withdraw from online and off-premises contracts.
10. They have taken note of the fact that the European Commission has not provided sufficient data to substantiate that the current rules are disproportionately burdensome for traders. In addition, this part of the proposal can be perceived as lowering the level of consumer protection in the internal market.
11. The EEA EFTA States would thus recommend reconsidering this part of the proposal.

#### **Transparency for consumers in online marketplaces**

12. The EEA EFTA states agree that there is a need for increased transparency in business-to-consumer transactions in online marketplaces. They therefore support the proposal to require online marketplaces to inform consumers about the main parameters determining the ranking of their offers, whether the seller is a trader or not, whether consumer law applies to the contract and which trader is responsible for ensuring that consumer rights are respected.
13. Under the proposal, these information requirements would be introduced in the Consumer Rights Directive only. However, in the opinion of the EEA EFTA States, information about the main parameters determining the ranking of offers and on whether the seller is a trader or not is also relevant for consumers at the marketing stage, which is regulated in the Unfair Commercial Practices Directive. For this reason, they would suggest that these information requirements also be introduced in the latter Directive.

#### **Hidden marketing in online search results**

14. The EEA EFTA States support the proposal to clarify that the ban on hidden marketing in the Unfair Commercial Practices Directive applies to search results in response to online queries by consumers.
15. However, they would recommend broadening this ban to also include hidden marketing in other digital channels, in particular in social media and blogs.

**Protection of consumers in respect of digital services**

16. The EEA EFTA States support extending the Consumer Rights Directive to include contracts for the provision of digital services for which consumers provide personal data. They welcome the fact that with this amendment, consumers will enjoy the same protection whether they provide money or personal data in contracts for digital services. Furthermore, they support the intention of this proposal to ensure seamless interplay between the Consumer Rights Directive and other important new legislation for the Digital Single Market, such as the General Data Protection Regulation and the Proposal for a Directive on the Supply of Digital Content.