

Implementation of the Omnibus Directive into Belgian Law leads to New Consumer Protection Rules

3 June 2022

A few months after the implementation deadline (*i.e.* 28 November 2021), the Belgian legislator finally adopted on 5 May 2022 the [act amending Books I, IV and XV of the Belgian Code of Economic Law](#) (the **Implementation Act**), implementing [Directive \(EU\) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules](#) (the **Omnibus Directive**) into Belgian law. This new piece of consumer protection legislation aims to strengthen the protection of consumer rights through increased transparency obligations as well as a more strict and consistent application of enforcement measures.

The Omnibus Directive brings changes to four existing pieces of consumer protection legislation relating to unfair commercial practices ([Directive 2005/29/EC](#)), consumer rights ([Directive 2011/83/EU](#)), unfair contract terms ([Directive 93/13/EEC](#)) and price indications ([Directive 98/6/EC](#)). The most important changes are summarised below.

Modernized Consumer Protection Rules

The scope of existing obligations has been extended to digital content and digital services, including in cases of transactions, whereby the consumer does not pay a price but merely provides their personal data. As a result, consumers involved in transactions relating to digital content and digital services can now benefit from the right to obtain mandatory pre-contractual information and a 14-days withdrawal period.

Increased transparency and extension of the scope of misleading practices

New transparency obligations have been introduced. This is because the European legislator considers that a higher ranking or any prominent placement of commercial offers within online search results by providers of online search functions has an important impact on consumers. As a result, consumers must receive information in relation to product rankings and customer review processes.

In the same context, the Implementation Act also introduces additional pre-contractual information obligations for online marketplaces, including with respect to the main parameters determining the ranking of different offers and the capacity of third-party suppliers.

In addition, the list of unfair practices in article VI.100 BCEL now includes, for example, the practice of submitting false customer reviews in order to promote products or providing search results in response to a consumer's online search query without clearly disclosing any paid advertisement or payment for specifically achieving higher ranking of products within the search results.

New Rules on Announcements of Price Reductions

One of the main objectives of the Omnibus Directive is to enhance price transparency towards consumers. The Implementation Act therefore introduces the obligation to indicate the "prior price" (*i.e.* the reference price) applied by the undertaking.

The "prior price" is, in principle, the lowest price applied by an undertaking in a period of thirty days prior to the application of the price reduction.

Stricter and more consistent enforcement

To facilitate more consistent application of penalties, the Omnibus Directive introduces non-exhaustive, indicative criteria, such as the nature, duration, severity and scope of an infringement, prior infringements, or mitigation measures taken.

In addition, the maximum penalties for infringing consumer protection rules have been increased. Fines of up to 6% of the annual turnover of an undertaking in Belgium can now be imposed in case of infringements of the consumer protection rules. Alternatively, if there is no information available on the annual turnover of the undertaking, fines can be imposed up to EUR 2 million.

On 2 June 2022, the Implementation Act was published in the Belgian Official Gazette (*Belgisch Staatsblad / Moniteur Belge*). The Implementation Act entered into force on **28 May 2022** and it does not provide for a transition period. It is therefore important for undertakings falling within the scope of the new consumer protection rules to review existing transparency measures as well as contractual and commercial practices in order to bring these up to date and in line with the new rules.

Please reach out should you need further information or assistance.

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