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1. New Deal for Consumers

On 11 April the European Commission published its “New Deal for Consumers” which is intended to strengthen EU consumer rights and enforcement. In particular it foresees representative (class) actions and greater protection for consumers online with more effective and coordinated penalties. It is composed of two proposals for directives:

- A proposal to amend the Unfair Terms in Consumer Contracts Directive, the Consumer Protection in the Indication of the Prices of Products Offered to Consumers Directive, the Unfair Commercial Practices Directive and the Consumer Rights Directive. This proposal’s aim is to ensure better enforcement and to modernise EU consumer protection rules. Most of the amendments concern the Unfair Commercial Practices Directive and the Consumer Rights Directive. With regard to the Consumer Rights Directive, there are changes to the rules on pre-contractual information requirements for contracts.
- A proposal on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive. This proposal aims to improve tools for stopping illegal practices and facilitating redress for consumers affected by the same harm. Only qualified entities such as consumer organisations and independent public bodies will be able to bring representative actions for redress. There are various other safeguards intended to prevent US style class actions. Representative actions will only be possible based on a final decision of a national court or authority and no punitive damages should be awarded.

There will be new penalties for breaches of EU consumer law. 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. Consumer protection authorities and courts in the various countries will continue to enforce consumer law.

With the proposals the Commission has also published a Communication containing an action plan to develop and strengthen coordinated enforcement actions among authorities and a study on transparency in online platforms. The European Commission is also working on a number of tools including a new Consumer Law Database which will be available in the third quarter of 2018 and a self-regulatory initiative by European business on key principles for better presentation of information to consumers, including standard terms and conditions.

2. Regulation for Estate Agents in the United Kingdom

The government in the United Kingdom has announced that new measures will be introduced to professionalise the estate agent market, driving up standards and bringing an end to ‘rogue managing agents’. Estate agents will be required to hold a professional qualification and to be transparent about the fees they receive for referring clients to solicitors, surveyors and mortgage brokers. Other measures to make the system easier, faster and more transparent include:

- encouraging the use of voluntary reservation agreements to help prevent sales falling through;
- setting a timeline for local authority searches so buyers get the information they need within 10 days;
- requiring managing agents and freeholders to provide up-to-date lease information for a set fee and to an agreed timetable which will end the current situation where leaseholders are at the mercy of freeholders and their agents;
- strengthening the National Trading Standards Estate Agency Team so they can carry out more enforcement activity which includes banning agents.

These measures are the outcome of a public consultation on improving the home buying and selling process and making it cheaper, faster and less stressful. There will now be a further consultation with stakeholders on creating a mandatory professional qualification for estate agents. The National Association of Estate Agents (NAEA) has long asked for improvements in the regulation of estate agents in the United Kingdom.

3. Political Agreement on the Proportionality Test for Regulation

A provisional political agreement has been reached on the proposed directive for a new proportionality test for regulation. This is one of the legislative measures contained in the Services Package. The provisional deal now needs to be confirmed by the Council Committee of Permanent Representatives (Coreper) and by the European Parliament in plenary sitting. The intention is to clarify the existing proportionality principle and make it easier to apply it in the Member States.

The Directive aims to establish rules for conducting proportionality assessments before introducing professional regulations in order to ensure the proper functioning of the Internal Market. The Directive applies to requirements restricting access to, or the pursuit of, existing regulated professions or new professions that Member States are considering whether to regulate. The Directive does not affect the Member States' competence, in the absence of harmonisation, and margin of discretion to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Before introducing new or amending existing legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, Member States should assess the proportionality of such provisions. The extent of the assessment should be proportionate to the nature, the content and the impact of the provision being introduced. The burden of proof of justification and proportionality lies on the Member States. Any unjustified restriction resulting from national law restricting the freedom of establishment and the freedom to provide services is prohibited, for example, any discrimination on grounds of nationality or residence. Any requirements related to specific professional qualifications must be justified by public interest objectives. It is for the Member States to determine the level of protection which they wish to afford to the public interest objectives and the appropriate level of regulation, within the limits of proportionality. The fact that one Member State imposes less strict rules than another Member State does not mean that the latter Member State's rules are disproportionate and therefore incompatible with EU law.

Member States should also take into account, where relevant in view of the nature and the content of the provision being analysed the following elements:

- the connection between the scope of professional activities covered by a profession and the professional qualification required;
- the complexity of the tasks in particular as regards the level, the nature and the duration of the training or experience required;
- the existence of different routes to obtain the professional qualification; whether the activities reserved to certain professionals can be shared with other professionals;
- the degree of autonomy in exercising a regulated profession in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional.

Member States should involve all parties concerned and give them the opportunity to make known their views. Where relevant and appropriate, Member States should carry out public consultations in accordance with their national procedures.

Discussions continue on other elements of the Services Package. The proposal for a notification procedure for authorisation schemes and requirements related to services remains to be agreed. The proposal for a Services e-card was rejected at a meeting of the Internal Market and Consumer Protection (IMCO) Committee on 21 March. The committee expressed its deep dissatisfaction about this proposal but did not propose its rejection to plenary. This leaves open the option of starting afresh or waiting for the European Council to adopt its own position on this proposal.

4. Votes This Week in the European Parliament

This week the European Parliament votes on the final text of the Energy Performance of Buildings Directive (EPBD). The vote is scheduled to take place on 17 April. On 19 April the Parliament is due to vote on the final text of the Fifth Anti-Money Laundering (AML) Directive. Interviewed ahead of the vote the two co-rapporteurs MEPs Judith Sargentini (NL, Greens/FLA) and Krišjānis Kariņš (LV, Christian Democrats/EPP) stressed the importance of keeping dirty money out of the European banking system. They also highlighted the need for more transparency with regards to the true ownership of companies and trusts, with Ms Sargentini saying “we made clear that if you do not want to show who the owner is, it will be difficult to do business in Europe”. She added that “now we say that platform providers and those who keep bitcoins in their wallet need to know their customers just as banks do. It is quite revolutionary”. The new legislation requires virtual currency exchange platforms and custodian wallet providers to comply with due diligence requirements and end the anonymity they previously enjoyed.

Once the votes have taken place and the new legislation enters into force, the Member States will have a period of time to implement the changes in national legislation. For the Fifth AML Directive this will be eighteen months.

Useful links

www.cepi.eu

A New Deal for Consumers

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=620435

New measures in the UK

<https://www.gov.uk/government/news/government-to-professionalise-the-estate-agent-market>

Political Agreement on the Proportionality Test

<http://data.consilium.europa.eu/doc/document/ST-7786-2018-INIT/en/pdf>

European Parliament Procedure File on the Energy Performance of Buildings Directive

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2016/0381\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2016/0381(COD))

European Parliament Procedure File on the Fifth Anti-Money Laundering Directive

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2016/0208\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2016/0208(COD))