

Retail and consumer law updates

As of 28 May 2022, the provisions which, as a consequence of Directive 2019/2161 on better enforcement and modernisation of EU consumer protection rules in the consumer field (known as the "Omnibus Directive"), were transposed into national law by Royal Decree Law 24/2021 of 2 November, that transposed numerous European Directives, will apply.

These provisions have been incorporated mainly in Royal Legislative Decree 1/2007, of 16 November, approving the consolidated text of the General Law for the Defence of Consumers and Users and other supplementary laws (hereafter GLDCU), but also in Law 3/1991, of 10 January, on Unfair Competition (hereafter LUC) and in an article of Law 7/1996, of 15 January, on the Regulation of Retail Trade.

**Amendments to the
General Law for the
Defence of Consumers
and Users, on Unfair
Competition Law and
on the Regulation of
Retail Trade Law**

The following are the aspects we consider to be most relevant:

Provisions affecting marketplaces:

In addition to the information that traders are already required to provide before the consumer and user (hereafter "consumer") is bound by a distance sale, the GLDCU incorporates a new article detailing the pre-contractual information that the marketplace must specifically provide to the consumer before the distance contracting of a good or service through the marketplace. This information is as follows:

- It establishes the obligation to report on the parameters that determine the classification of goods or services as a result of the search and the relative importance of such parameters with respect to others. This obligation will also affect websites that search for products or services such as search engines for flights, travel, insurance etc.
- In relation to information on the offer of goods and services, the obligation to inform whether or not the third party offering the good or service is a trader is established. Likewise, if the sale is a distance sale or off-premises and the seller is not a trader, information must be provided on the fact that the application of the GLDCU is excluded.
- The marketplace shall provide information on the guarantees and insurance that, where applicable, it offers.
- Finally, information should be provided on the methods of dispute resolution and, where appropriate, how the marketplace intervenes.

Consumer reviews:

- Information should be provided on whether consumer and user reviews of goods or services provided by traders correspond to consumers and users who have actually purchased the good or used the service, as well as how the reviews are processed. Claiming that reviews of a good or service are added by consumers who have actually used the service or purchased the good, without having taken reasonable and proportionate steps to verify that such reviews belong to those consumers, is an unfair practice because it is misleading.
- Adding or commissioning the inclusion of false consumer reviews or endorsements, or distorting consumer reviews or social endorsements for the purpose of promoting goods or services is prohibited.

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Revision of the sanctioning regime relating to the defence of consumers:

- The classification of infringements and quantification of penalties is revised.
- The provisions on qualification and graduation of sanctions are incorporated, which fill the void of the provisions that were declared unconstitutional and null by the Constitutional Court Ruling 10/2015, of 2 February.
- The parties responsible for the commission of infringements and the powers to impose penalties are determined.
- It provides for the possibility that, if the infringement is attributed to a legal person, the persons forming part of its governing or management bodies, as well as the technicians responsible for the preparation and control, may also be held liable.

Jurisdiction and liaison points:

In order to clarify where an infringement is considered to have been committed when the trader operates through a website, rules are established to determine the territorial authority competent to inspect and sanction any infringements that may be committed.

Pre-contractual information in distance selling:

- The outdated fax, as a means of contact between the consumer and the trader, disappears.
- This includes the obligation to provide information on other means of online communication provided by the trader, such as contact forms. It is worth remembering at this point that, according to the CJEU of 10 July 2019, case C-649/17-Amazon EU, the European Court of Justice ruled that distance selling companies are not obliged to provide a telephone number (and we understand that they are not obliged to provide an email address either) as long as they provide other communication systems that allow effective and direct communication with consumers, such as chats, contact forms or callback systems.
- In the case of telephone contracting, the possibility of providing pre-contractual information to the consumer not only over the telephone but also using any other telephone form of communication (e.g. by sending a link to consult this information through the telephone) is incorporated.

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Dual quality:

Any marketing of goods as identical to goods marketed in other Member States is considered to be unfair when such goods have a significantly different composition or characteristics, unless justified by legitimate and objective factors.

Other unfair practices:

The LUC classifies as unfair practice -because it is misleading- those communications inserted in the media that are paid for by traders to promote goods or services without informing that they are advertising contents. This covert commercial practice extends to information society services and social networks. This point has a major impact on the increasingly used advertising through influencers.

Definition of "previous price" in reduced-price sales:

As regards the sales of products at a discount in which there is an obligation to indicate the previous price and the discounted price, the concept of "previous price" is maintained as the lowest price that would have been applied to identical products in the preceding thirty days, although it is clarified that reductions of prices of products that are close to their expiry date or best before date are not taken into account for the purposes of determining the "previous price" when an ordinary discount is applied to the price.

All in all, we consider it extremely important that the Omnibus Directive included the definition of "previous price", since the Autonomous Regions had the power to define what was understood by "previous price", with the resulting different definitions depending on the Autonomous Region in which a discounted sale was to be carried out, and therefore all the autonomous regulations should be brought into line with the definition of the aforementioned Directive.

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