



The Omnibus Directive: Is Your Business Ready?

As part of an EU-wide initiative to strengthen the enforcement of consumer law and modernise consumer protection rules, the European Commission has introduced a suite of amendments to 4 key existing consumer protection laws, under the informally named “Omnibus Directive”.

The Directive came into force in January 2020 and European Member States had until November 2021 to adopt their implementing legislation. The laws are now due to come into full effect by May this year.

So, what do the changes involve? Well, the implications of the Directive are wide-ranging, but there are several key changes that should be noted:

Firstly, the Directive introduces hefty maximum fines for consumer law breaches of at least 4% of a company’s annual turnover in the relevant Member State (or €2m if a calculation is not possible). Member States are also free to introduce higher fines.

The Directive also expands the scope of certain existing consumer rights (which previously applied only to physical goods and services) to cover digital goods, content, and services.

Certain existing consumer laws which previously extended only to services paid for with money will now extend to “free” digital services (for example, cloud services or social media) which are ‘paid for’ with a consumer’s personal data. This is a big change for relevant businesses that, until now, have escaped the reaches of consumer law.

The Directive introduces a new, direct right to individual remedies for consumers harmed by unfair commercial practices.

Online marketplaces will be subject to much stricter transparency requirements, including a requirement to clearly indicate the use of paid placements in search results, and to provide consumers with information about how offers are ranked.

Consumers must be informed whenever pricing is individualised (for example, where based on an algorithm).

And finally, for every price reduction claim, businesses will have to make sure that the lower price being advertised was available for a period of at least 30 days before the claim is made.

So how do these rules apply to UK businesses?

Post-Brexit, the UK is not obliged to implement the Directive, though the Government has indicated its clear intention to modernise UK consumer laws and significantly increase enforcement powers. In any event, UK businesses selling products or services to EU consumers will have to comply with the Directive, because EU consumer law applies to, and protects, consumers in Member States regardless of the location of the business.

So, what steps should businesses be taking to prepare for these incoming changes?

If we learned anything from GDPR, it’s that preparation is everything and businesses that are going to be affected by the changes should be readying themselves. The first step is understanding the changes in all relevant EU territories, and determining which aspects of the business are going to be affected, and how.