

European Parliament seals two deals to increase consumer protection and strengthen rules on food labelling

Within the space of two weeks, the European Parliament voted through two important pieces of legislation for the consumer goods and retail sector that have been the subject of negotiations since 2008; one in relation to consumer rights generally, and the other in relation to food labelling. While the latter is logical in its approach, the former is a messy legal act that covers everything from buying music online to ordering tailor made curtains by mail order and - as a result - requires all manner of exceptions and caveats, the most amusing of which is a recital dealing with the situation where a wedding dress is delivered after the wedding day. The new rules in particular on withdrawal from a distance contract are heavily weighted in favour of consumers. However, harmonisation of consumer rights will also facilitate internationalisation of online retailing within the EU.

Consumer rights

On 23 June 2011, the Parliament adopted a Directive on Consumer Rights which was originally proposed by the Commission in 2008. It replaces two Directives from 1985 and 1997 respectively on contracts negotiated away from business premises and distance contracts, which both lay down contractual rights for consumers.

The new Directive takes a full harmonisation approach, with a single framework regulating certain aspects of business-to-consumer contracts across the EU. The rationale for the legislation is that domestic distance sales are growing significantly, while the growth in cross-border distance sales has been limited. The Directive therefore pays particular attention to off-premises contracts (concluded in a place which is not the trader's business premises; for example the consumer's home or office) and distance contracts (concluded over the Internet, through mail order, by telephone or fax).

The new rules apply to a wide variety of goods and services but there are exemptions for sectors where separate legislation already exists, including:

- electronic communications
- energy markets
- financial services
- food labelling (more information below)
- medicine, medical devices and patients' rights in cross-border healthcare and
- public transport (although the provisions of the Consumer Rights Directive on excessive fees for credit cards and hidden costs will apply).

Gambling is also excluded although no specific harmonised EU rules exist.

The transport of goods and car hire are covered by this Directive, but package holidays are not. Goods sold through automatic vending machines or at automated commercial premises are not covered.

Key Issues

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Withdrawal

Under the Directive, a new harmonised 14 (calendar) day withdrawal period applies to all distance and off-premises contracts. This is double the seven days legally prescribed by EU law today. Consumers can withdraw without providing any reason and without incurring any costs (except in certain situations, outlined below). Withdrawal must be done either using the standardised withdrawal form annexed to the Directive or by means of a statement from the consumer. Because the Directive is a full harmonisation act, Member States may not alter the standard form in any way when transposing the legislation.

If a trader does not inform the consumer about the right of withdrawal, the withdrawal period is automatically extended to twelve months from the end of the initial withdrawal period or to 14 days from the day the trader belatedly provides the information.

The withdrawal period will start from the moment the consumer receives the goods, rather than at the time of conclusion of the contract, which is currently the case. For service contracts, the withdrawal period will start on the day of the conclusion of the contract.

The trader must reimburse the consumer for the goods or services but also the delivery costs within 14 days (except in cases where an express delivery was requested, in which case the consumer pays the difference between standard delivery and express delivery) and using the same means of payment as the consumer used for the initial transaction. The trader may also be liable for the cost of the consumer returning the goods, unless the consumer has been clearly informed that he / she will bear this cost and has been provided with an estimate of the maximum costs of doing so. In the case of bulky goods such as a sofa, the costs could be significant.

There are many exceptions to the rules on withdrawal, including for: (i) items that may lose value for example because of market fluctuations (wine, say), (ii) tailor-made items such as curtains which only correspond to one consumer's specifications, (iii) contracts for services that have been performed, (iv) goods which deteriorate rapidly, (v) sealed goods which are not suitable for return due to health protection or hygiene reasons once opened, and (vi) sealed audio and video recordings, and computer software that has been unsealed after delivery.

If an item has been used 'more than necessary' (for example an item of clothing that has been worn rather than simply tried on), its relative decrease in value will be deducted from the amount reimbursed to the consumer.

Rules on delivery

Rules on when delivery should occur will continue to be determined at a national level but must not be more than 30 days from the day the contract is concluded. If the trader fails to meet that deadline, the consumer can

ask for the delivery within a set period and if the trader then fails to deliver the goods within that time, the consumer can terminate the contract. Any delivery restrictions must be flagged at the beginning of the ordering process, as well as the accepted means of payment.

Fees and default options

Businesses are prohibited from charging consumers fees that exceed the cost borne by the trader for the use of a certain means of payment, for example additional fees for using a credit card.

Calls to a trader must not be charged at more than the basic rate of a telephone call.

Default options which the consumer is required to reject in order to avoid additional payment (e.g. travel insurance or car hire when booking a flight) are effectively banned as online shoppers will be entitled to be reimbursed for them because their 'express consent' was not given. Under the new rules, the final step in the order process must be clearly indicated and consumers must explicitly confirm that they understand that they have to pay a price, for example by the statement 'order with duty of payment' or some other language that indicates that proceeding will entail an obligation to pay.

Information requirements

All businesses - whether committing to a distance contract or not - must provide the following information to consumers:

- characteristics of the good or service
- identity of the trader, the trader's address and telephone number
- total price, including any taxes or delivery charges
- where applicable, arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling procedure
- duration of the contract or conditions for terminating the contract and
- special information requirements for digital content and the interoperability of digital content with hardware and software.

For off-premises and distance contracts, there are additional information requirements for example in relation to contact details, the anticipated cost of returning goods (where this will be borne by the consumer) and rules relating to the right of withdrawal. In order to boost cross-border online sales, Member States are not permitted to add any requirements to those stipulated in the Directive.

Penalties for non-compliance

Member States can decide on the penalties for non-compliance with these measures but must notify them to the European Commission.

Food labelling

On 6 July 2011, the Parliament adopted a Regulation that will introduce a set of new food labelling rules. Also originally proposed in 2008, the Regulation was the subject of intense negotiations between Members of the European Parliament (MEPs) and EU Member States. A compromise was finally brokered under the Hungarian Presidency.

Several key aspects of the Commission's proposal were dropped in the negotiations (for example mandatory nutrition information no longer has to appear on the front of packs and alcoholic beverages have been exempted from the ingredient and nutrition labelling requirements). Calls by consumer organisations for a traffic light system giving consumers a visual warning for high fat, sugar or salt content were also dropped, with industry instead arguing in favour of a system of guideline daily amounts (GDAs).

The current legislation on general food labelling dates back to 1978 and nutrition labelling rules were adopted in 1990. The new Regulation combines existing rules on food labelling and nutritional information in one act.

New list of mandatory information

The following information is now mandatory for all pre-packed food. It must appear in a minimum font size of 1.2mm (or 0.9mm for small packets) so that consumers will be able to read food labels 'without having to use a magnifying glass' (in the words of European Commissioner for Health and Consumer Protection, John Dalli):

- the name of the food and a list of its ingredients
- allergens. Allergenic substances (defined as having 'a scientifically proven allergenic or intolerance effect') must now be highlighted in the ingredient list. Under the new rules, this also applies to non-packaged foods, for example food sold in restaurants or canteens. Member States will decide how to do this in practice
- the quantity of certain ingredients
- the net quantity of the food
- the date of minimum durability or the 'use by' date
- any special storage conditions
- the name and address of the business responsible for the food within the EU

- the country of origin must now appear on a wider range of food (extended from beef, honey, olive oil, and fresh fruit and vegetables to fresh, chilled or frozen pork, lamb, poultry and goat meat) and where failure to indicate the country of origin might mislead the consumer. The Commission will introduce implementing rules for this purpose within two years of the Regulation's entry into force
- instructions for use (where it would be difficult to make appropriate use of the food without them)
- alcoholic strength by volume for beverages with more than 1.2% by volume of alcohol
- a nutrition declaration, including energy content as well as fat, saturated fat, carbohydrate, sugar, protein and salt levels (per 100g or 100ml to allow comparisons between products, although the Commission may be given powers to adopt rules on the expression of the nutrition declaration per portion). This must be presented in a tabular format using the agreed minimum font size and following a template that is provided in Annex XV of the Regulation. In future, the Commission may allow the use of pictograms and symbols if this conveys the same level of information to consumers as words and numbers.

The name of the food, net quantity and alcoholic strength (where appropriate) must appear in the same field of vision. Where a product has been defrosted, this must be stated.

Food producers can also include GDAs or use the term 'per portion', once the European Commission has defined portion sizes.

The same compulsory information must be provided when food is sold over the Internet or through catalogues. It must be made available to the consumer before the purchase is concluded. This does not apply to food sold in automatic vending machines.

There are exemptions for:

- glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar (they must only provide information on the name of the food, any allergens and the net quantity)
- fresh produce that is not pre-packed
- packaging that is too small to accommodate the mandatory labelling requirements and
- beverages with alcohol content of more than 1.2% by volume for which no list of ingredients or nutrition declaration is required. The decision to exempt alcohol will be reviewed when the Commission reports on the Regulation three years after its entry into force.

Member States may require additional mandatory information on grounds of public health, consumer protection or the prevention of fraud. In those cases, they must notify the measures to the European Commission.

The obligation to provide information on food is imposed on the operator under whose name or business name the food is marketed or, if that operator is not established in the EU, the importer into the EU.

More on the country of origin

Country of origin labelling could also in future be extended to other categories of food (such as meat other than beef, pork, lamb, goat and poultry, meat when it is used as an ingredient, milk or unprocessed foods) but the Commission must first carry out impact assessments to weigh up the costs and benefits. Information on the place of birth, place of rearing and place of slaughter of animals will be considered as part of these impact assessments and reports.

Tougher rules against misleading information

In order to avoid any misleading of consumers, 'imitation foods' - foods that look similar to other foods but are made of different ingredients, such as 'cheese-like' foods made with vegetable products - must be clearly labelled on the front of the pack in a prominent font size and next to the brand name.

Only mineral water and foods for particular nutritional uses may be attributed with preventing, treating or curing a disease.

Further work for the Commission

While many of the new rules have been agreed and included in the text adopted by Parliament, the Commission has been tasked with preparing additional material in the form of:

- delegated acts on
 - the availability of certain mandatory particulars by means other than on the package or on the label, e.g. pictograms or symbols
 - the list of foods not required to bear a list of ingredients
- the re-examination of the list of substances or products causing allergies, intolerances, or the list of nutrients that may be declared on a voluntary basis
- implementing acts on
 - the modalities of expression of one or more particulars by means of pictograms or symbols instead of words or numbers
 - the manner of indicating the date of minimum durability and the country of origin or place of provenance for meat
 - the precision of the declared values for the nutrition declaration or
 - the expression per portion or per consumption unit of the nutrition declaration.

It will do so with the assistance of the Standing Committee on the Food Chain and Animal Health Committee which is made up of Member State representatives. For more information on the procedures for adopting delegated acts and implementing acts, please refer to the [Clifford Chance client briefing](#) on this topic.

Next steps and entry into force

The Food Labelling Regulation and Consumer Rights Directive must still be formally adopted by Member States in the Council. This is anticipated in the autumn and will be a rubber-stamping process. Both texts will then be published in the Official Journal of the European Union. They will enter into force 20 days later.

The new labelling requirements will apply from the dates still to be inserted in Article 55. Food companies will have three years to adapt to most of the rules, but five years for the rules on nutrition values. The legislation allows food businesses a maximum of five years to switch to the new labels.

Member States will have two years after the date of entry into force of the Consumer Rights Directive to comply with it. Thirty months after the entry into force of the Directive, the measures will apply.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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