



Federation of the European
Sporting Goods Industry

FESI ASSESSMENT EU CONSUMER RULES

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FEDERATION OF THE EUROPEAN
SPORTING GOODS INDUSTRY

House of Sport

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The European Parliament and the Council reached an agreement on the proposed Directive on better enforcement and modernization of EU consumer protection rules. This legislation amends four existing consumer protection directives: on Unfair Commercial Practices, on Consumer Rights, on Unfair Contract Terms and on Price Indication.

The new law updates consumer rights, ensuring consumers will have more information about how online rankings work, especially when they derive from paid placements. The revamped rules also aim to make the use of online reviews and pricing more transparent. Consumers must also be informed from whom they are buying goods or services (a trader, the online marketplace itself or a private person)

On Wednesday 17 April 2019, the Regulation was officially approved by the European Parliament. The text still must be formally approved by the Council of the European Union. Member States will then have 24 months from the date of entry into force of the directive to transpose it into national law.

Please find below the main elements of interest for the sporting goods industry.

Fulfillment Centers

When products are offered to consumers in online marketplaces, both the online marketplace and the third-party supplier are involved in the provision of the precontractual information. As a result, consumers using the online marketplace may not clearly understand who their contractual partners are and how their rights and obligations are affected.

Online marketplaces should inform the consumers whether the third-party offering goods, services or digital content is a trader or non-trader, on the basis of a declaration by the third party to the online marketplace (**article 1.4.a.ii** and **article 2.5.a**). When the third party offering the goods, services or digital content declares its status as non-trader, online marketplaces should

provide a short statement that the consumer rights stemming from Union consumer protection legislation do not apply to the contract concluded (**article 2.5.c**). Furthermore, consumers should be informed how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online market place

Online marketplaces should not be required to list specific consumer rights when informing consumers about their applicability or non-applicability.

FESI assessment: FESI supports the proposed requirements for online marketplaces to clearly inform consumers about who is selling the product and which entity is responsible for the application of EU consumer rules, if applicable.

Ranking

It should be prohibited for a trader to provide information to a consumer in the form of search results in response to the consumer's online search query without disclosing paid advertising or payment specifically for achieving higher ranking of products within the search results (**article 1.7.a**).

Traders enabling consumers to search for goods and services, offered by different traders or by consumers should inform consumers about the default main parameters determining ranking of offers presented to the consumer (**article 1.4.b**). Traders should not be required to disclose the detailed functioning of their ranking mechanisms, including algorithms.

Penalties

Current national rules on penalties differ significantly across the Union. It should remain a matter for the Member States to choose the type of penalties to be imposed. However, Member States should set in their national law the maximum fine for such infringements at a level that is at least 4% of the trader's annual turnover in the Member State or Member States concerned (**article 1.3**, **article 2.3** and **article 3.4**). Trader in certain cases can also be a group of companies.

Member States should not be prevented from maintaining or introducing in their national law higher maximum turnover-based fines for widespread infringements and widespread infringements with a Union dimension of consumer law. It should also be possible for Member States to base such fines on trader's worldwide turnover, or to extend the rules on fines to other infringements not covered by provisions of this Directive.

A common non-exhaustive and indicative criterion has been introduced for the application of penalties (**article 1.6.2**, **article 3.3** and **article 4.2**). These criteria include, for example the nature, gravity, scale and duration of the infringement, the repeated character of the infringements and any redress provided by the trader to consumers for the harm caused.

The consumer should have access to compensation for damages and, where relevant, price reduction or contract termination, in a proportionate and effective manner (**article 1.5.1**).

FESI assessment: FESI supports the inclusion of a list of common, non-exhaustive criteria for assessing the gravity of a potential infringement. The harmonization of these criteria at EU-level will provide additional predictability to both economic operators and authorities. However, FESI remains concerned by provision linking fines to a trader's turnover. From our perspective, penalties should be proportionate to the level of infringement – especially since harsh fines have no deterrent effect on companies who are well intentioned, but violate EU consumer laws inadvertently

Consumer Reviews

Consumers increasingly rely on consumer reviews and recommendations when they make purchasing decisions.

Therefore, when traders provide access to consumer reviews of products, they should inform whether processes or procedures are in place to ensure that the published reviews originate from consumers who have purchased or used the products (**article 1.4.c**).

If such processes or procedures are in place, these should provide information on how the checks are made and provide clear information to consumers on how reviews are processed, for example, if all reviews, either positive or negative, are posted or whether these reviews have been sponsored or influenced by a contractual relationship with a trader. Moreover, it should therefore be considered as an unfair commercial practice to mislead consumers by using statements according to which reviews of a product are submitted by consumers who have actually used or purchased the product when no reasonable and proportionate steps have been taken to ensure that they originate from such consumers.

Traders should also be prohibited from publishing fake consumer reviews and endorsements, such as 'likes' on social media, or commissioning others to do so in order to promote their products (**article 1.7.b**)

Pricing

Any announcement of price reduction shall indicate the prior price applied by the trader. Prior price shall mean the lowest price applied by the trader during a period of time which may not be shorter than one month prior to the application of the price reduction – unless the product has been on the market for less than 30 days (**article 4.a**).

Advertising

Traders may be required to provide the same information in advertising (e.g. an online ad on a media website) and at the pre-contractual stage (e.g. on the pages of their online web shops). The information requirements also include informing the consumer about the trader's complaint handling policy.

Data

The Directive should apply whenever the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital content or digital service, and the trader does not process this data for any other purpose (**article 2.2.b**).

Fax

Considering technological developments, the reference to fax number has been removed from the list of the means of communication since fax is rarely used and largely obsolete (**article 2.4** and **article 2.5.b**).

Right of Withdrawal

Member States can adopt national measures to provide a longer period for the right of withdrawal and to derogate from specific exceptions from the right of withdrawal.

FESI assessment: While the right of withdrawal is somehow addressed in the Regulation, the Commission's initial proposals that consumers could no longer be allowed to return products that they have already used instead of merely trying them out, and that traders will no longer have to reimburse the consumers before actually receiving the returned goods has been rejected by the European Parliament and Member States. Supporting provisions perceived as limiting consumer's right was not a viable option for MEPs – especially for the ones running for re-election.

Counterfeiting

FESI assessment: Despite a strong support from the European Parliament and the Commission, our initial proposal that online marketplace operators must inform consumers if the product they bought has been identified as a counterfeit was rejected by Member States. It seems that while Member States were not opposed to this amendment, concerns emerged regarding the wording used. In any cases, FESI will continue pushing for increasing the liability of online platforms when counterfeits are sold on their web stores.