

Higher Level of Protection for Consumers and New Obligations for Businesses Forthcoming in Bulgaria

Following recent amendments to the Bulgarian Consumer Protection Act (“CPA”) and the adoption of a new law on the provision of digital content, digital services and sale of goods, a new set of requirements for traders is planned to be introduced which would develop further their obligations towards consumers. In particular, an EU Directive introducing modernization of Union consumer protection rules¹ is to be transposed into Bulgarian domestic law by 28 November 2021 and the respective draft law amending the CPA is already subject to public consultations.

The draft law introduces various changes to the consumer protection rules of the Bulgarian Consumer Protection Act, including some new areas of regulation.

Online Marketplaces

Online marketplaces will be subject to certain new requirements from a consumer protection point of view. An “*online marketplace*” is understood as a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers. In other words, these are the well-known websites, applications and online platforms on the market which link consumers to traders or consumers to other consumers who use the online interfaces for personal rather than for business purposes.

Providers of such online marketplaces will have to provide to consumers certain mandatory information so that before being bound by an offer for conclusion of a distance contract through the online marketplace, each consumer should be well aware of:

- the main parameters determining the ranking of products presented to the consumer as a result of a search query and the relative importance of those parameters, as opposed to other parameters; the information should be available in a specific section of the online interface that is directly and easily accessible from the page where the query results are presented.
- whether the third-party providing goods/services through the online interface is a trader or a consumer;
- the fact that the consumer shall not be protected by any consumer protections rules if the third-party providing goods/services/digital content through the online interface is another consumer;
- the allocation of the responsibilities between the third-party providing goods/services/digital content and the provider of the online marketplace. This information must be provided in a clear and comprehensible manner and not only in general terms and conditions or similar contractual documents.

¹ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernization of Union consumer protection rules

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New Information Obligations

Further information obligations are set forth by the draft law not only for providers of online marketplaces but in general for all traders as well.

First of all, the obligation for the provision of information regarding the main parameters determining the ranking of products will also apply to all online traders in the context of the prohibition on misleading commercial practices. Under the CPA, a commercial practice which does not provide essential information to consumers shall be considered misleading while the main parameters determining the ranking of products as a result of a search query and the relative importance of those parameters will be included in the scope of the essential information which must be available to consumers. Thus, traders not providing this information may be subject to allegations and/or penalties for conducting misleading commercial practices.

In the light of misleading commercial practices, it is worth mentioning that traders' practices will be considered misleading also if a trader:

- provides search results in response to a consumer's online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of respective products within the search results;
- states that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers;
- submits (or commissions to a third person to submit) false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.

Lastly, it is interesting to note that the relevant information obligations set forth by the CPA will also apply to contracts between traders and consumers where traders provide digital content/services and consumers actually "pay" with their personal data. However, this would not be the case if consumers' personal data are collected and processed exclusively for the purposes of provision of the respective digital content/service or in relation with traders' legal obligations in this respect.

Universal Quality for EU consumers

Traders will generally have to ensure the same quality of goods to all EU consumers. This is resulting from the envisaged prohibition of marketing of a good in one Member State that is identical to a good marketed in other Member States, if that good has a significantly different composition or characteristics, unless justified by legitimate and objective factors.

Consumers' Remedies

Consumers' remedies will also be developed. Consumers will have two opportunities for action in case of unfair trade practices – in addition to the option of terminating the contract and claiming damages, consumers will be entitled to claim a reduction in price.

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Sanctions

In terms of sanctions, the amounts of all fines under the CPA will be substantially increased. Moreover, in cases of cross-border infringements, traders will be subject to fines which may reach up to 4 % of the sanctioned trader's turnover in each Member State concerned or up to BGN 3 920 000 (approximately EUR 2 million) where the turnover cannot be calculated.

With this in mind, traders will have to adapt their businesses to the new obligations in order to comply with the new requirements.

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