

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 modernisation of Union consumer protection rules (Text with EEA relevance)

Article 4

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

- (1) in Article 2, the first paragraph is amended as follows:
 - (a) point 3 is replaced by the following:
 - (3) ‘goods’ means goods as defined in point (5) of Article 2 of Directive (EU) 2019/771 of the European Parliament and of the Council⁽¹⁾;
 - (b) the following point is inserted:
 - (4a) ‘personal data’ means personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council⁽²⁾;
 - (c) points (5) and (6) are replaced by the following:
 - (5) ‘sales contract’ means any contract under which the trader transfers or undertakes to transfer ownership of goods to the consumer, including any contract having as its object both goods and services;
 - (6) ‘service contract’ means any contract other than a sales contract under which the trader supplies or undertakes to supply a service, including a digital service, to the consumer;
 - (d) point (11) is replaced by the following:
 - (11) ‘digital content’ means digital content as defined in point (1) of Article 2 of Directive (EU) 2019/770 of the European Parliament and of the Council⁽³⁾;
 - (e) the following points are added:
 - (16) ‘digital service’ means a digital service as defined in point (2) of Article 2 of Directive (EU) 2019/770;
 - (17) ‘online marketplace’ means 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;
 - (18) ‘provider of an online marketplace’ means any trader which provides an online marketplace to consumers;

- (19) 'compatibility' means compatibility as defined in point (10) of Article 2 of Directive (EU) 2019/770;
 - (20) 'functionality' means functionality as defined in point (11) of Article 2 of Directive (EU) 2019/770;
 - (21) 'interoperability' means interoperability as defined in point (12) of Article 2 of Directive (EU) 2019/770.;
- (2) Article 3 is amended as follows:
- (a) paragraph 1 is replaced by the following:
 - 1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer where the consumer pays or undertakes to pay the price. It shall apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.;
 - (b) the following paragraph is inserted:
 - 1a. This Directive shall also apply where the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content which is not supplied on a tangible medium or digital service in accordance with this Directive or for allowing the trader to comply with legal requirements to which the trader is subject, and the trader does not process those data for any other purpose.;
 - (c) paragraph 3 is amended as follows:
 - (i) point (k) is replaced by the following:
 - (k) for passenger transport services, with the exception of Article 8(2) and Articles 19, 21 and 22.;
 - (ii) the following point is added:
 - (n) for any goods sold by way of execution or otherwise by authority of law.;
- (3) in Article 5, paragraph 1 is amended as follows:
- (a) point (e) is replaced by the following:
 - (e) in addition to a reminder of the existence of the legal guarantee of conformity for goods, digital content and digital services, the existence and the conditions of after-sales services and commercial guarantees, where applicable.;
 - (b) points (g) and (h) are replaced by the following:
 - (g) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital services;

- (h) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of.;
- (4) Article 6 is amended as follows:
- (a) paragraph 1 is amended as follows:
 - (i) point (c) is replaced by the following:
 - (c) the geographical address at which the trader is established as well as the trader's telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting.;
 - (ii) the following point is inserted:
 - (ea) where applicable, that the price was personalised on the basis of automated decision-making.;
 - (iii) point (l) is replaced by the following:
 - (l) a reminder of the existence of a legal guarantee of conformity for goods, digital content and digital services.;
 - (iv) points (r) and (s) are replaced by the following:
 - (r) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital services;
 - (s) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of.;
 - (b) paragraph 4 is replaced by the following:

4. The information referred to in points (h), (i) and (j) of paragraph 1 of this Article may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 of this Article if the trader has supplied these instructions to the consumer, correctly filled in. The references to the withdrawal period of 14 days in the model instructions on withdrawal set out in Annex I(A) shall be replaced by

references to a withdrawal period of 30 days in cases where Member States have adopted rules in accordance with Article 9(1a).;

(5) the following article is inserted:

Article 6a

**Additional specific information requirements
for contracts concluded on online marketplaces**

1 Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, provide the consumer with the following information in a clear and comprehensible manner and in a way appropriate to the means of distance communication:

- a general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented, on the main parameters determining ranking, as defined in point (m) of Article 2(1) of Directive 2005/29/EC, of offers presented to the consumer as a result of the search query and the relative importance of those parameters as opposed to other parameters;
- b whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace;
- c where the third party offering the goods, services or digital content is not a trader, that the consumer rights stemming from Union consumer protection law do not apply to the contract;
- d where applicable, 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 marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law.

2 Without prejudice to Directive 2000/31/EC, this Article does not prevent Member States from imposing additional information requirements for providers of online marketplaces. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.;

(6) in Article 7, paragraph 3 is replaced by the following:

3. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make such an express request on a durable medium and request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.;

(7) Article 8 is amended as follows:

(a) paragraph 4 is replaced by the following:

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the

information, the trader shall provide, on or through that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to, respectively, in points (a), (b), (e), (h) and (o) of Article 6(1) except the model withdrawal form set out in Annex I(B) referred to in point (h). The other information referred to in Article 6(1), including the model withdrawal form, shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.;

(b) paragraph 8 is replaced by the following:

8. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make an express request and request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.;

(8) Article 9 is amended as follows

(a) the following paragraph is inserted:

1a. Member States may adopt rules in accordance with which the withdrawal period of 14 days referred to in paragraph 1 is extended to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such rules shall be proportionate, non-discriminatory and justified on grounds of consumer protection.;

(b) in paragraph 2, the introductory part is replaced by the following:

2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days or, in cases where Member States have adopted rules in accordance with paragraph 1a of this Article, 30 days from.;

(9) in Article 10, paragraph 2 is replaced by the following:

2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days or, in cases where Member States have adopted rules in accordance with Article 9(1a), 30 days after the day upon which the consumer receives that information.;

(10) in Article 13, the following paragraphs are added:

4. In respect of personal data of the consumer, the trader shall comply with the obligations applicable under Regulation (EU) 2016/679.

- 5 The trader shall refrain from using any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader, except where such content:
- (a) has no utility outside the context of the digital content or digital service supplied by the trader;
 - (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader;
 - (c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts; or
 - (d) has been generated jointly by the consumer and others, and other consumers are able to continue to make use of the content.
- 6 Except in the situations referred to in point (a), (b) or (c) of paragraph 5, the trader shall, at the request of the consumer, make available to the consumer any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader.
- 7 The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.
- 8 In the event of withdrawal from the contract, the trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to paragraph 6.;
- (11) Article 14 is amended as follows:
- (a) the following paragraph is inserted:

2a. In the event of withdrawal from the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties.;
 - (b) in paragraph 4, point (b)(i) is replaced by the following:
 - (i) the consumer has not given prior express consent to the beginning of the performance before the end of the 14-day or 30-day period referred to in Article 9;;
- (12) Article 16 is amended as follows:
- (a) the first paragraph is amended as follows:
 - (i) point (a) is replaced by the following:
 - (a) service contracts after the service has been fully performed but, if the contract places the consumer under an obligation to pay, only if the performance has begun with the consumer's prior express consent and acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;;

- (ii) point (m) is replaced by the following:
 - (m) contracts for the supply of digital content which is not supplied on a tangible medium if the performance has begun and, if the contract places the consumer under an obligation to pay, where:
 - (i) the consumer has provided prior express consent to begin the performance during the right of withdrawal period;
 - (ii) the consumer has provided acknowledgement that he thereby loses his right of withdrawal; and
 - (iii) the trader has provided confirmation in accordance with Article 7(2) or Article 8(7).;

- (b) the following paragraphs are added:

Member States may derogate from the exceptions from the right of withdrawal set out in points (a), (b), (c) and (e) of the first paragraph for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.

In the case of service contracts which place the consumer under an obligation to pay where the consumer has specifically requested a visit from the trader for the purpose of carrying out repairs, Member States may provide that the consumer loses the right of withdrawal after the service has been fully performed provided that the performance has begun with the consumer's prior express consent.;

- (13) Article 24 is replaced by the following:

Article 24

Penalties

1 Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2 Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:

- a the nature, gravity, scale and duration of the infringement;
- b any action taken by the trader to mitigate or remedy the damage suffered by consumers;
- c any previous infringements by the trader;

- d the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available;
- e penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council⁽⁴⁾;
- f any other aggravating or mitigating factors applicable to the circumstances of the case.

3 Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4 % of the trader's annual turnover in the Member State or Member States concerned.

4 For cases where a fine is to be imposed in accordance with paragraph 3, but information on the trader's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.

5 Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them.;

(14) in Article 29, paragraph 1 is replaced by the following:

1. Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 6(7), Article 6(8), Article 7(4), Article 8(6), Article 9(1a), Article 9(3) and the second and third paragraphs of Article 16, it shall inform the Commission thereof by 28 November 2021, as well as of any subsequent changes.;

(15) Annex I is amended as follows:

(a) part A is amended as follows:

(i) the third paragraph under 'Right of withdrawal' is replaced by the following:

To exercise the right of withdrawal, you must inform us [2] of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post or email). You may use the attached model withdrawal form, but it is not obligatory. [3];

(ii) point 2 under 'Instructions for completion' is replaced by the following:

[2.] Insert your name, geographical address, telephone number and email address.;

(b) in part B, the first indent is replaced by the following:

'To [here the trader's name, geographical address and email address are to be inserted by the trader]:'

- (1) Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC ([OJ L 136, 22.5.2019, p. 28](#)).’;
- (2) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1](#)).’;
- (3) Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services ([OJ L 136, 22.5.2019, p. 1](#)).’;
- (4) Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 ([OJ L 345, 27.12.2017, p. 1](#)).’;