

Bird & Bird

A Legislative
Decree
implementing
Directive (EU)
2019/2161
(Omnibus
Directive) on
consumer
protection was
approved in
preliminary
examination

5 December 2022



A Legislative Decree implementing Directive (EU) 2019/2161 (Omnibus Directive) on consumer protection was approved in preliminary examination

During its meeting of 1 December 2022, the Council of Ministers approved, in preliminary examination, the Legislative Decree implementing 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 for better enforcement and modernisation of Union rules on consumer protection (the "Legislative Decree" and the "Omnibus Directive").

The Legislative Decree introduces significant amendments and additions to Legislative Decree No. 206 of 6 September 2005 (the Italian Consumer Code) to extend the protection granted to consumers, in line with the provisions contained in the Omnibus Directive.

The text will now pass to the parliamentary committees for their opinion. This will be followed by the final approval by the Council of Ministers.

The New Provisions

The provisions of the new Legislative Decree concern, among other things, contracts between consumers and professionals containing unfair terms, unfair commercial practices, unfair competition conducts and the dissemination of untruthful commercial communications.

In particular, the Legislative Decree introduces the following main changes:

- first of all, the definition of misleading practice is broadened to include the promotion of a product, in one Member State, as identical to another product or service marketed in other Member States, even though the former is significantly different in its composition or characteristics from the latter;
- in addition to information about the product or service itself, all the information concerning the characteristics of the provider are now included among the information considered misleading;
- the list of commercial practices considered in any event misleading under Article 23 of the Consumer Code is in turn significantly extended and now also includes:
 - 1 the failure to clearly indicate paid advertisements aimed at obtaining a better product classification,
 - 2 the resale of tickets for events purchased through automated means and

- 3 the use by professionals of reviews that are false or whose authenticity has not been verified beforehand;
- a new Article 17-*bis* is introduced in the Consumer Code, according to which all announcements of price reductions for a product or service must mandatorily indicate the price reduction applied during the 30 days preceding the date of the reduction (except for products placed on the market for less than 30 days as well as perishable agricultural and food products);
 - finally, the period granted to consumers for exercising the right of withdrawal in contracts concluded during unsolicited visits to the consumer's home and excursions organised to sell products is extended to 30 days.

The New Penalties

The penalty regime against professionals who violate consumer protection rules set forth by the Consumer Code is also tightened considerably.

The most relevant changes are:

- the upper limit of the penalty that can be imposed by the Italian Competition and Market Authority (Autorità Garante della Concorrenza e del Mercato - AGCM) in case of an unfair commercial practice is doubled from EUR 5 million to EUR 10 million;
- in the case of penalties imposed on cross-border operators based on information also acquired through other European Authorities, the penalty will be 4% of the turnover achieved by such operators in Italy (in the absence of which, the maximum penalty will be EUR 2 million);
- the maximum amount of the penalty that can be imposed by the AGCM for non-compliance with injunctions or removal of the effects and commitments undertaken is in turn doubled from EUR 5 million to EUR 10 million;
- in the case of violations of unfair terms, a penalty of between EUR 5,000 and 10 million is also introduced.

Finally, the new Legislative Decree provides for the right of consumers to go to ordinary courts to challenge unfair commercial practices of professionals.

We now have to wait for the final approval of the Legislative Decree in order to assess the consequences of these changes on both professionals and consumers.

Contacts



Rita Tardiolo

Counsel

+390230356000
rita.tardiolo@twobirds.com



Sara Massalongo

Associate

+390230356000
sara.massalongo@twobirds.com



Francesca Signorini

Associate

+390230356000
francesca.signorini@twobirds.com

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
• Luxembourg • Lyon • Madrid • Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai
• Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.