



The Better Enforcement and Modernisation Directive ('Omnibus Directive')

New guidance details the impact of the directive on mobile games

Regulator: Member State consumer protection regulators



JURISDICTION RELEVANCE:

European Union

TIMELINE:

Applied from May 28th,
2022

WHAT YOU SHOULD KNOW:

- The Omnibus Directive is a key part of the European Commission's 'New Deal for Consumers,' which aims at strengthening the enforcement of EU consumer law.
- It amends four directives, principally, the Unfair Commercial Practices (UCPD) and Consumer Rights (CRD) Directives, along with the Unfair Contract Terms and Price Indication Directives regarding penalties.
- The directive brings digital goods, content and services, into the ambit of existing consumer rights legislation, as well as broadening transparency measures and the right to individual remedies for consumers.
- The headline is the introduction of GDPR-style enforcement: National authorities will have the power to impose a fine of at least up to 4% of a trader's turnover for widespread infringements. If the annual turnover cannot be calculated, then Member States can apply a fine of up to €2,000,000.
- As of December 17th, 2021, the European Commission has published [updated guidance documents](#) on the interpretation and application of the Omnibus Directive – demonstrating how mobile games are firmly in scope.
- [Notice on the Consumer Rights Directive](#)
 - » Digital services may face more onerous conditions than digital content, for example, regarding the right of withdrawal for service contracts, which allows the consumer to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not.
 - » **Downloadable games** would normally qualify as online digital content when their use does not depend on the continuous involvement of the game supplier.
- [Notice on the Unfair Commercial Practices Directive](#)
 - » **In-game micro-transactions** that enhance the playing experience of the respective user, such as virtual items, would normally qualify as contracts for online digital content.
 - » This provides clarity on transparency obligations, addressing data-driven practices and '**dark patterns.**'
 - » Gaming (transparency): **In-game purchases** and products available outside of the game must be disclosed. Direct exhortations to children to buy products are prohibited.
 - » The presence of paid random content (e.g., loot boxes) should be clearly disclosed to the consumer.
 - » Only games where in-app purchases are optional can be presented as '**free**' without misleading consumers. A game cannot be marketed as such if the consumer cannot play the game without making in-app purchases.

MOST TELLING:

'Video games, mobile games and online games feature a variety of commercial practices that may raise fairness concerns under the UCPD, in particular for vulnerable consumers such as children and teenagers, who merit special protection under [Article 5\(3\) UCPD.](#)'

DELANY & CO HOT TAKE:

The devotion of a specific section of the UCPD guidance to 'gaming' is a sign that the Omnibus Directive is rendering consumer protection a more treacherous arena for mobile games – especially, considering the new enforcement measures.