

HOTREC¹ position on better enforcement and modernisation of EU consumer protection rules: a good basis that must be supported and improved

The fast evolving digitalisation of the economy and the transformation of consumption patterns make necessary some adjustments to the current EU consumer framework. This is particularly true in the tourism sector (the 3rd socio-economic activity in Europe) which is being radically transformed by digitalisation and the dominant market power of platforms. The Commission [proposal for a better enforcement and modernisation of EU consumer protection rules \(COM\(2018\)185\)](#) represents an excellent basis to bring fairness, efficiency and responsibility to online markets. It should be supported, and can be further improved to meet fully today's market reality.

1) A need to strengthen transparency requirements for online marketplaces

As identified in the European Commission's impact assessment, consumers suffer important detriments when using online marketplaces because of largely un-transparent market behaviours and a lack of information provided to consumers using online marketplaces. **HOTREC shares the Commission's assessment and supports the Commission proposal, which should even be strengthened on some aspects.**

- **Search results driven by a remuneration shall be made transparent to consumers**

As highlighted in the European Commission's impact assessment, the ranking of products is decisive when a consumer decides which product to buy: in the absence of information on the criteria for rankings consumers usually only look at the top search results, assuming that they are natural search results reflecting the best deals for them based on objective criteria. Unfortunately, this is not the case, as "*paid placement*" or "*paid-for-ranking*" (i.e. the practice of paying a higher commission to the online marketplace to have its product toping the search results) are ruling the market, a fact that consumers are not made aware of. See annex for concrete examples.

As a result, **consumers often ignore that they do not acquire the product/service best corresponding to their search result, but instead the product/service advertised to them for which the higher commission was paid to the online intermediary.** This leads to a clear detriment for consumers and other competing traders².

It is therefore **critical to ensure that criteria for rankings of products/services on online marketplaces are made transparent to consumers, as proposed in article 1(6) of the Commission proposal and article 2(4) of the Commission proposal** which amend N°11 of Annex I of the Unfair Commercial practice Directive and insert a new article 6a(a) into the Consumer Rights Directive. However, the Commission proposal of a new article 6a(a) in the Consumer Rights Directive can even be further improved to **make it clear to consumers when there is a direct remuneration link between a trader and the online marketplace driving the search result.**

¹ HOTREC represents the hotel, restaurant and café industry at European level. The sector counts in total around 1.9 million businesses, being 99,5% small and medium sized enterprises (90% are micro enterprises, i.e. employing less than 10 people). These businesses make up some 60% of value added. The industry provides some 11.1 million direct jobs in the EU alone. Together with the other tourism industries, the sector is the 3rd largest industry in Europe. HOTREC brings together 43 national associations representing the interest of this industry in 30 different European countries.

² See [Commission's impact assessment SWD\(2018\) 96 final – page 26](#): "*When consumers have no information about the criteria used for ranking their search results, first ranked products have a 47% higher chance of being chosen than other products on the same list. Studies also show that around 80% of consumers only look at the first page of search results. As a consequence, there is potential for detriment if consumers are misled by ranking due to lack of transparency about the ranking criteria used by online marketplaces.*"

HOTREC position:

- We strongly support the amendment to N°11 of annex I of the Unfair commercial practices Directive;
- We strongly welcome and support the new article 6a(a) of the Consumer Rights Directive (proposed by Article 2(4) of the Commission proposal) that makes mandatory for online marketplaces to indicate the criteria for rankings of offers shown to consumers;
- We consider that the new article 6a(a) of the Consumer Rights Directive shall be improved: online marketplaces shall indicate prominently and in an unambiguous manner to the consumer when there is a capital link or remuneration between the online marketplace and the specific supplier driving the ranking.

- **Transparent requirements are necessary to avoid fake discounts**

Online market places acting as intermediaries for tourism/travel services often claim discounted prices, which have either not been contracted with the supplier and/or which do not actually exist for the dates for which consumers are looking for. See annex for concrete examples.

This leads to a clear detriment for consumers (and competing traders whose real offers were disregarded), who are misled and induced to choose a specific product/service based on the false belief that they obtained a discount for the dates they have contracted. The Commission proposal should therefore be strengthened in this aspect.

HOTREC position:

We consider that the new article 6a of the Consumer Rights Directive (proposed by Article 2(4) of the Commission proposal), should be completed by a new paragraph making it mandatory for online marketplaces to indicate the calculation basis of the discounts displayed for a specific product/service.

- **Consumers must know if they contract with a trader for consumer laws to be effective**

As highlighted by the European Commission's impact assessment³, consumers buying products/services on online marketplaces often do not know if they contract with a trader or not, if consumer law applies to the transaction, who is liable in cases of problems. This can cause massive consumer detriment when a problem arises, while honest traders are now very often facing competition from rogue traders who use the anonymity of transactions on platforms to hide to consumers the fact they are traders and that the transaction is bound by EU consumer law. This is particularly the case on "collaborative economy" online marketplaces.

To tackle this issue, article 2(4) of the Commission proposal introduces new information requirements for online marketplaces (see new articles 6a(b), 6a(c) and 6a(d) in the Consumer Rights Directive). **HOTREC fully supports the inclusion of such information requirements for online market places.**

However, in its current wording, the effectiveness of these requirements solely rely on the good will of traders using online marketplaces. **Unfortunately, experience shows that many traders use collaborative economy marketplaces to hide that they are professional traders, therefore by-passing their legal obligations without any risk of being discovered⁴. A solution must be found**

HOTREC proposes that online platforms should play a responsible however reasonable/proportionate role. While it would be disproportionate for online marketplaces to check themselves *ex-ante* if all third parties willing

³ See [Commission's impact assessment SWD\(2018\) 96 final – page 25 & 26](#)

⁴ See for instance tourism accommodation services offered through collaborative economy platforms, where multiple listings by traders are common. E.g. on AirBnB, in [Amsterdam](#), 20% of all listings are multiple listings, with 1 'host' (in reality a trader) having more than 100 apartments. In [Athens](#) and [Brussels](#), respectively 42% and 36% of listings are multiple listings.

to use their services are actually traders, online marketplaces may far more easily detect *ex-post* “abnormal” commercial activities from a third party who declared not to be a trader. Online marketplaces may also be notified by an external entity that the third party using the online market place behaves like a trader. When this happens, online marketplaces should react and label correctly the third party as a trader. HOTREC therefore proposes that the new article 6a(b) of the Consumer Rights Directive be completed by a provision saying that **the quality of trader is not only based on the declaration of the third party to the online market place, but also in light of the knowledge by the online marketplace of the activity of that third party on the online marketplace.**

HOTREC position:

- We support the new article 6a(b), 6a(c) and 6a(d) of the Consumer Rights Directive proposed by article 2(4) of the Commission proposal
- The new article 6a(b) of the Consumer Rights Directive should be completed by a provision saying that information requirement about whether the third party is a trader is not only based on the declaration of the third party but also in light of the knowledge by the online marketplace of the activity of the third party on the online marketplace.

- **Certainty for consumers: online market places shall display the official classification of a service.**

In the tourism/travel market, products/services often have an official classification reflecting the quality or standing of the service (e.g. Hotelstars classification systems for the hotel sector, official quality schemes, etc.). These classification system are often well known by consumers, who can base their choice of a specific product on such official classification.

Some online marketplaces do not inform consumers about such official classification and ambiguously refer instead to alternative “non-official” (but similar) systems (without informing consumers properly). This misleads consumers, damage businesses reputation and distort competition. An additional transparency requirement should be introduced, requiring online marketplaces to inform consumers about the official classification and/or quality categorisation of a good/service where applicable.

HOTREC position:

We consider that a new requirement for online marketplaces should be introduced to inform consumers about the existing classification or official quality categorisation of a product/service (where applicable).

2) Removing un-necessary burdens without weakening consumer protection

HOTREC fully supports the Commission’s proposal to remove un-necessary burdens for businesses which do not affect negatively consumer rights. **HOTREC welcomes the proposed amendment to article 7(4) of the Unfair Commercial practices Directive** which removes the obligation to provide information on the complaint’s handling policy at the advertising stage. **Knowing that this information must be provided anyway at the pre-contractual stage, this will help reducing advertisement costs for SMEs and micro-enterprises, without weakening consumers’ position.** HOTREC also welcomes the amendment to article 6-1(c) of the Consumer Rights Directive **giving more flexibility** to traders about the most appropriate means of communication with consumers.

HOTREC position: We support the Commission proposal to remove un-necessary burdens, and in particular the Commission proposal to amend article 7(4) of the Unfair Commercial practices Directive and article 6-1(c) of the Consumer Rights Directive.

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Annex:

Example for paid for rankings / hidden advertising:

Default results by 'Recommended hotels' or 'Hotels recommandés'. No further explanation that payment of additional fees by the service providers are influencing the search result.

Avenue Louise, Bruxelles, Belgique mar. 19 sept. - mer. 20 sept. 1

Avenue Louise : 97 établissements

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- ☐ Moins de 75 €
- ☐ 75 € - 124 €
- ☐ 125 € - 199 €
- ☐ 200 € - 299 €

Thon Hotel Bristol ★★★★★
Stephanie
Avenue Louise
02 200 63 72 • Offre Expedia
Réservé au cours des 2 dernières heures
Très bien ! 4,3/5 (1.164 avis)
Total TTC* à partir de **128 €**
Offre !
Gagnez 255 points Expedia+

The Hotel ★★★★★ +VIP
Avenue Louise
02 200 63 72 • Offre Expedia
Fabuleux ! 4,5/5 (946 avis)
Total TTC* à partir de **194 €**
Offre !
Gagnez 389 points Expedia+

Le Châtelain ★★★★★ +VIP
Avenue Louise
02 200 63 72 • Offre Expedia
Superbe ! 4,4/5 (262 avis)
Total TTC* à partir de **165 €**
Gagnez 329 points Expedia+

Example false discount:

The price is of 127 EUR is not referring to the looked for date, but to prices within one month around the searched for date. It is unclear whether it is a bargain or just an unpopular day.

You just missed it. Our last room sold out today.
The discount is based on the third highest current price of the property for rooms with the same booking conditions in a 30-day window around your check-in date (15 days before and 15 days after check-in date; if less than 15 days are between today and the check-in date, we will use the corresponding number of days after the check-in date to result in a 30-day total). To ensure we are making a fair comparison, we always use the same reservation conditions (meal plan, cancellation policy and room type). This means that you get the same room for a lower price compared to other check-in dates at the same time of year.

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HOTREC proposal of amendments on better enforcement and modernisation of EU consumer protection rules

- Search results influenced by a remuneration paid to an online marketplace shall be made transparent to consumers

Text proposed by the Commission	Amendment
Amendment Article 2(4)	
<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p> <p style="padding-left: 40px;">(a) the main parameters determining ranking of offers presented to the consumer as result of his search query on the online marketplace;</p>	<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p> <p style="padding-left: 40px;">(a) the main parameters determining ranking of offers presented to the consumer as result of his search query on the online marketplace. <i>In particular, the existence of a remuneration link between the online marketplace and the third party shall be displayed in an unambiguous and prominent manner;</i></p>
Justification	
<p>Paid placement have become very common on online marketplaces. This means that consumers often ignore that they do not acquire the product/service best corresponding to their search result, but instead the product for which the higher commission was paid to the online intermediary. Search results influenced by a remuneration should be unambiguously identified as such by online marketplaces not to mislead consumers.</p>	

- Transparent requirements are necessary to avoid fake discounts

Text proposed by the Commission	Amendment
Amendment Article 2(4)	
<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p>	<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p>

Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:	Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information: <i>[new] (e) in an unambiguous manner the calculation basis for any price reduction for the products resulting from his search query on the online marketplace.</i>
<p style="text-align: center;">Justification</p> <p>Online market places acting as intermediaries for tourism/travel services often claim discounted prices which do not actually exist for the exact dates for which consumers are looking for. Clear and accurate information should be provided to the consumers about alleged price promotions and discounts.</p>	

- **Consumers must know if they contract with a trader for consumer laws to be effective**

Text proposed by the Commission	Amendment
<p style="text-align: center;">Amendment Article 2(4)</p>	
<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p> <p>[...] (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 online marketplace</p>	<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p> <p>[...] 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 online marketplace <i>and in light of the reasonable knowledge by the online marketplace of the activity of the third party on the online marketplace</i></p>
<p style="text-align: center;">Justification</p> <p>It has become quite common for third-party to by-pass consumer legislation by pretending not to be a trader, although the commercial activity of the third-party leaves no doubt about it. When an online marketplace is notified that a third party is actually behaving as a trader despite indicating otherwise, online marketplaces should take the necessary corrective measure. This does not equate to a general obligation for online marketplaces to monitor the information which they transmit.</p>	

- **Certainty for consumers: online market places shall display the official classification of a service**

Text proposed by the Commission	Amendment
Amendment Article 2(4)	
<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p>	<p>(4) The following Article 6a is inserted: 'Article 6a Additional information requirements for contracts concluded on online marketplaces</p> <p>Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the online marketplace shall in addition provide the following information:</p> <p><i>(new) (f) the official classification, categorisation or quality grade of a product, where applicable.</i></p>
<p>Justification</p> <p>In some markets, there are official classification or quality schemes which are recognised by public authorities and consumers (e.g. travel market, Hotel stars systems, etc.). Online marketplaces sometimes fail to inform consumers about such schemes and provide instead information on alternative schemes without informing properly consumers about it. This misleads consumers. A transparency requirement should be introduced, requiring online marketplaces to inform consumers about the official classification and/or quality categorisation of a good/service where applicable.</p>	

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