



What's the deal with the New Deal for Consumers

The question, 'what has the EU done for consumers?', does come up quite a lot, but that's okay. Why? Well, because, in the case of consumer rights, it's actually easy to answer. Put simply, the EU has, and continues to, ensure that consumers here in Ireland and elsewhere in Europe have a number of rights, and where those protections are not provided, or they are treated unfairly in some way, then it strives to clear those obstacles and make the path to redress a little bit easier than it was before. So, [with online shopping on the up \(particularly cross-border purchases\)](#) the European institutions have been working hard to strengthen consumer rights.

Modernisation and enforcement of consumer rights was the subject of a Consumer Dialogue event held in Dublin last week during which the [European Commission's New Deal for Consumers](#) proposal was discussed in depth. So what is this 'new deal' and what additional benefits will it have for consumers, and traders, when it comes to pass? We've put together a small Q&A which will hopefully help you know more about the New Deal for Consumers.

As always, we have the consumer success story of the month which looks at how ECC Ireland helped consumer who had €950 withheld on his credit card for alleged damage to a rental car. Whether you're entitled to compensation when a flight is cancelled due to a strike by the airline's flight staff is the topic of the consumer query.



New Deal for Consumers Q&A

What is it?

The New Deal for Consumers is a proposal by the European Commission that aims to ensure that all European consumers can fully benefit from their rights under EU legislation. In its [press release issued in April 2018](#), the Commission stated it 'will empower qualified entities to launch representative actions on behalf of consumers and introduce stronger sanctioning powers for Member States' consumer authorities. It will extend consumers' protections when they are online and clarify how dual quality practices misleading consumers are prohibited'.



Why is this being done and how?

The [Juncker](#) Commission wants to build on the achievements already undertaken to improve consumer protection and adapt consumer legislation to the fast-moving online marketplace. Many of these improvements took place as part of the [Digital Single Market Strategy](#), for example the end of [roaming charges](#) and unjustified [geo-blocking](#) as well as ensuring cross-border portability of online content services. The [Consumer Protection Cooperation Regulation](#) was also modernised to help enforce the existing consumer rules through better cooperation amongst national consumer authorities.

To see if consumers were truly benefiting from their rights, the European Commission carried out an EU-wide evaluation in 2017. It found that although EU consumer rights are strong, improvements still needed to be made in the area of enforcement of consumer rights, making these rights fit for the digital age, and that an update on the rules would also be required to ensure legal clarity for businesses operating cross-border. There was also the '[Dieselgate](#)' scandal which affected thousands of consumers and showed that consumer legislation, particularly in the area of facilitating collective redress, was seriously lacking.

So, the New Deal for Consumers hopes to fill in the gaps and hopefully addresses some of these issues.

What benefits and additional rights for consumers are being proposed?

Consumer rights when shopping online:

- More transparency in online marketplaces – When buying from an online marketplace, consumers will have to be clearly informed about whether they are buying products or services from a trader (B2C transactions) or a private individual (C2C transactions), so they know whether they are protected by consumer rights if something goes wrong.
- More transparency on search results – When searching online, consumers will be clearly informed if a search result is paid for by the trader (e.g. search engine paid-for advertising). Online marketplaces will also have to inform consumers about the main parameters determining the ranking of the results.
- New consumer rights for 'free' digital services – When paying for a digital service, consumers currently benefit from certain information rights and have 14 days to cancel their contract

(withdrawal right). This right will be extended to 'free' digital services for which consumers provide their personal data, but do not pay with money (e.g. storage services, social media or email accounts).

Giving consumers the tools to enforce their rights:

- Representative action – Under the New Deal for Consumers Directive it will be possible for a qualified entity, such as a consumer organisation, to seek redress, such as compensation, replacement or repair, on behalf of a group of consumers that have been harmed by an illegal commercial practice. Collective actions will be made possible in all EU countries. To ensure that it is different from US-style class actions, representative actions under this Directive will not be open to law firms, but only to entities such as consumer organisations that are non-profit and fulfil strict eligibility criteria, monitored by a public authority.



Better protection against unfair commercial practices:

- Consumers in all EU Member States will have the right to claim individual remedies (e.g. financial compensation or termination of contracts) when they are affected by unfair commercial practices, such as aggressive or misleading marketing.

Effective penalties for violations of EU consumer law:

- Under the proposal, national consumer authorities will have the power to impose effective, proportionate and dissuasive penalties in a coordinated manner. For widespread infringements that affect consumers in several EU Member States, the available maximum fine will be at least 4% of the trader's annual turnover in each respective Member State. Member States are free to introduce higher maximum fines.

Dual quality of consumer products:

- The New Deal for Consumers will update the Unfair Commercial Practices Directive in order to make explicit that national authorities can assess and address misleading commercial practices involving the marketing of products as being identical in several EU countries, if their composition or characteristics are significantly different.

What incentives are there for traders?

The New Deal proposes to remove unnecessary burden for businesses, including changes to obligations on traders in relation to consumers' right to withdrawal. For instance, consumers will no longer be allowed to return products that they have already used instead of merely trying them out, and traders will no longer have to reimburse the consumers before receiving the returned goods. There will also be more flexibility in the way traders can communicate with consumers, allowing them to also use web forms or chats instead of email, provided consumers can keep track of their communication with the trader.

What happens now?

The New Deal is just a proposal, for now. It will need to go through the various stages in the European Parliament and the Council before it is approved, enacted and becomes EU legislation. The European Commission is currently conducting a number of [public consultations](#) to gather views and hear from experts in the area of consumer legislation.

One of these public consultations took place at the Davenport Hotel in Dublin on Wednesday, 19th September, the goal of which was to explain to stakeholders and citizens what the EU is doing for them as consumers (including the New Deal for Consumers) and to listen to their views on how the EU can better tackle their consumer issues. The event was organised by the European Commission in collaboration with the Department of Business, Enterprise and Innovation and featured a keynote speech by Pat Breen, Minister for Trade, Employment, Business, EU Digital Single Market and Data Protection. There was also a panel debate featuring representatives from consumer and business organisations as well as academia. ECC Ireland's legal adviser Juan Bueso was one of the panel participants.

[Click here to go to ECC Ireland's post about the Consumer Dialogue, the issues discussed, as well as a video of the event.](#)

Consumer success story of the month:

An Irish consumer booked a rental car through a broker website for a holiday in Spain in June 2017. When he arrived at the car rental location, he agreed to a request for a deposit of €1,059 to be withheld on his credit card to cover the excess on the insurance and for a full tank of fuel. He returned the car a week later without any damage recorded and a full tank of fuel but a few days later only €109 was reimbursed to his credit card, which was for the fuel only; there was still an outstanding amount of €950 for the insurance. The consumer did not receive anything in writing, nor a verbal warning that the rental car was damaged in any way, indeed, the car rental representative had said that she had been 'too busy' to check the vehicle. After numerous failed attempts to contact the trader, the consumer sought the assistance of ECC Ireland. The car rental company was contacted to seek clarification as to why the amount of €950 was retained and, to request that it be refunded, providing proof from the consumer's bank that no payment was received. Following this intervention, the car rental company refunded the consumer in full.

Consumer query of the month:

Q: My flight was cancelled due to a strike by the airline's flight staff. I applied for, and received, a full refund for the cancelled flight but am I entitled to also claim compensation?

A: Passengers are entitled to compensation where a flight is cancelled by the air carrier at short notice (e.g. less than two weeks before the scheduled departure) unless the air carrier can prove that the disruption was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures were taken.

Regulation 261/2004 states that extraordinary circumstances 'may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier'. However, the Court of Justice of the European Union (CJEU) has reiterated that such circumstances are not necessarily and automatically grounds of exemption from the obligation to pay compensation. Therefore, the concept of 'extraordinary circumstances' must be interpreted strictly and assessed on a case-by-case basis.

In a recent CJEU judgement (joined cases C-195/17, and others), the court found that a 'wildcat strike' could not be regarded as beyond the actual control of the air carrier and, thus, could not be covered by the concept of 'extraordinary circumstances'. However, whilst the said judgment provides further clarity in the interpretation of 'extraordinary circumstances', it concerns a 'wildcat strike' by flight staff which may not necessarily be comparable to other industrial actions. Case-by-case assessment is still required.

In your particular case, if the airline does not agree to pay compensation and you are not satisfied with the explanation given, we would suggest that you contact the National Enforcement Body (NEB) responsible for the application of Regulation 261/2004 in the country where the disruption took place, having regard to the airport of intended departure. You can find the contact details for the competent NEB in the list available [here](#).

If you want more information about this or any other cross-border consumer issue, please contact us on 01 8797 620 or go to www.eccireland.ie. You can also follow us on [Twitter](#).

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The European Consumer Centre is part of the European Consumer Centres Network (ECC-Net), which covers 30 countries (all EU countries plus Norway and Iceland), and offers a free and confidential information and advice service to the public on their rights as consumers, assisting customers with cross-border disputes. ECC Ireland is funded by the European Commission and the Competition and Consumer Protection Commission.

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