[DE] Bill on strengthening consumer protection in competition and trade law

IRIS 2021-1:1/10

Dr. Jörg Ukrow
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 4 November 2020, the German Bundesministerium der Justiz und für Verbraucherschutz (Federal Ministry of Justice and Consumer Protection – BMJV) published a bill on strengthening consumer protection in competition and trade law. The *Entwurf einer Novelle des Gesetzes gegen den unlauteren Wettbewerb* (Bill amending the Unfair Competition Act – UWG-E) is particularly designed to implement Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules. It should improve consumer protection against unfair business practices, in particular in the context of digital business models, and provide for more effective enforcement of consumer law.

The bill aims to improve consumer information in the form of rankings and customer reviews. It requires operators of online market places to indicate whether suppliers who use their platforms to sell goods and services are businesses (Article 5b(1)(6) UWG-E). If comparison sites and other intermediary platforms allow users to search for the goods or services of different suppliers, they must disclose the main parameters of their rankings and how they are weighted (Article 5b(2)(1) UWG-E). Platforms, online shops and other companies that publish customer reviews must indicate whether and how they ensure that such reviews are actually written by customers (Article 5b(3) UWG-E). These new transparency obligations are supplemented with special provisions designed to protect customers from covert advertising in search results and forged customer reviews by extending the annex to Article 3(3) of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act – UWG).

Under Article 9(2) UWG-E, consumers are also entitled to compensation if companies culpably infringe the consumer protection provisions of the UWG. In the case of widespread breaches in several EU member states of regulations designed to transpose Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, the relevant authorities are authorised, as part of joint enforcement measures, to impose fines of up to 4% of a company's annual turnover. For this reason, the bill provides for the inclusion of a prohibition clause (Article 5c UWG-E) and a fine (Article 19 UWG-E) in the UWG.

© European Audiovisual Observatory (Council of Europe) 2026

Irrespective of these developments at European level, a series of recent conflicting court decisions in Germany has highlighted the need for greater legislative clarity with regard to the conditions under which online content is deemed to serve a commercial purpose that needs to be labelled. This primarily concerns newer forms of commercial communication and online marketing, such as influencer marketing. In this context, the bill aims to increase legal certainty in relation to the scope of application of the UWG, in particular in terms of the distinction between the expression of personal opinions and commercial communication on the Internet. It explains the circumstances in which content must be labelled as commercial communication. The bill also states that a business activity carried out exclusively for the benefit of a third-party company should only be considered to have a commercial purpose if the third-party company pays a fee or similar consideration in return (Article 5a(4)(2) UWG). This means that recommendations posted by influencers exclusively for third parties without any payment being made in return do not need to be labelled as commercial communications.

Interested parties had until 2 December 2020 to respond to the draft. Their opinions will be published on the BMJV website.

Entwurf eines Gesetzes zur Stärkung des Verbraucherschutzes im Wettbewerbs- und Gewerberecht

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Staerkung_Verbraucherschutz_Wettbewerbs-_und_Gewerberecht.pdf?__blob=publicationFile&v=2

Bill on strengthening consumer protection in competition and trade law

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026