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JUSTICE AND CONSUMERS DIRECTORATE-GENERAL

Consumers
Consumer Strategy, Representation and
International Relations

European Consumer Consultative Group (ECCG)

13-14 April 2016

Draft Meeting Report

1. Welcome by the Chair

Despite all the transport obstacles due to the combination of the aftermath of the terrorist attacks of March 22nd and an air control traffic strike at Brussels airport, a quite high number of ECCG members managed to attend the meeting in person, while other members followed the discussions via web-streaming, having the possibility to actively intervene by email with questions and statements. The Commission appreciated the high level of commitment shown by all ECCG members.

2. Update on Consumer Policy Actions

The Commission provided an update on consumer policy actions. This overview covered updates in relation to the implementation of the Digital Single Market (DSM) Strategy, the REFIT of consumer and marketing law, the work of the multi-stakeholder groups on comparison tools and green claims and the update of the Consumer Protection Cooperation (CPC) regulation. The Commission also presented the main findings of the study on Consumer Vulnerability (published in February 2016), as well as a preview of key findings of two behavioural studies that will be published in the coming months – on Online Marketing to Children and on Terms and Conditions. Moreover, members welcomed and appreciated the data and evidence on the perceived performance level of consumer markets coming from the Consumer Scoreboard.

Members strongly welcomed these first results and commented with many questions on methodology, coverage, and sample size. These methodological details are transparently reported when the studies are published. In relation to consumer vulnerability, one member pointed out that roughly 40% of European citizens lack digital skills and this must be taken into account in the work on the Digital Single Market. One example was brought to the attention of the members, from the Irish health insurance sector, where 4 actors offer more than 400 types of insurance packages, making the choice for consumers very difficult. Furthermore, some members pointed out that there are companies creating marketing strategies by exploiting disabilities and/or disadvantages of vulnerable consumers; those members aim at mapping and fighting this problem.

With regard to the study on Terms and Conditions, members agreed on the importance of having shorter T&Cs, with simple language and easily readable font size. On this point, it was pointed out that there are studies showing that people under 20 do not read T&Cs. Clear T&Cs could also lead to an increase in the trust of consumers, which may translate into a positive economic outcome. Participants also pointed out that transparency of terms should be distinguished from actual content of terms. Indeed, although some terms can be seen as transparent, they still might be very unfair to consumers.

It was recalled that in some MS – e.g. Italy – Consumer Organisations are not allowed to give their endorsement to any aspect of business practices by law and that these legal provisions do not meet the approval of Consumer Organisations because markets need help, which at the moment is provided only by comparison websites. On the other hand, many other national organisations endorse business practices even though some members considered endorsement as a potential issue in terms of cost and resources.

3. Thematic discussion: Digital Single Market

a. Consumer Protection Cooperation (CPC) Regulation

The Commission presented the current state of play and the main elements of the Impact Assessment for the review of the CPC Regulation. The general objective is to reduce non-compliance to consumer legislation, especially in the online cross-border context, where non-compliance is still high. There are 3 specific objectives: (1) to reduce situations where infringements are not detected and sufficiently addressed; (2) to reduce unnecessary delays and costs; (3) to reduce situations where CPC authorities reach diverging outcomes on the same malpractice.

One of the key areas for improvement concerns market surveillance tools. Those are needed in order to assure a better level of compliance and to prevent damage to consumers, through infringements of consumer legislation by businesses. Especially those practices which are widespread across the EU have to be detected in a faster way. Information about market issues from various sources must be shared in a better way. Therefore an active cooperation with consumer and trade organisations will be fundamental.

The preferred options for the revision of the Regulation include the clarification of the scope of the mutual assistance mechanisms, additional minimum powers to enable the cooperation among CPC authorities, a single procedure for serious infringements harming consumers in most or all Member States and better market surveillance mechanisms. The adoption of the proposal is foreseen for 25 May.

Members stressed that the collaboration between national authorities and consumer organisations is fundamental for tackling market issues fast and efficiently. Depending on Member States, this cooperation varies from being regular and well organised to being rather infrequent. The

Commission pointed out that there is need for consumer organisations to be proactively seeking cooperation with their national enforcement authorities.

b. The Digital Contracts Proposal

The Commission gave a short state of play of the negotiations on the digital contracts proposals. Since the adoption of the two proposals on 9 December 2015 significant progresses in the negotiations have been made. In the Council, the examinations of the proposals are advancing quickly. The March Justice and Home Affairs (JHA) Council took note of the progress report presented by the Dutch Presidency and endorsed the approach to examine first the proposal for a Directive on digital content, while not losing sight of the need for coherence with the proposal for a Directive on online sales of goods. In the European Parliament the work will start soon. In March 2016 a compromise was reached on the division of responsibilities between the IMCO (Internal Market and Consumer Protection) and JURI (Legal Affairs) Committees. For the proposal on the supply of digital content IMCO and JURI Committees will have joint competences and will both be in the lead. For the proposal on online sales of goods, IMCO will be in the lead. Members proved to be interested in including as many stakeholders as possible in the discussions on the proposal for a Directive on digital content and pointed out the necessity to ensure coherence with the newly adopted General Data Protection Reform. Members also underlined that the results of the REFIT exercise should be taken on board during the negotiation for a Directive on online sales of goods.

c. Platforms

The Commission presented preliminary results of the public consultation on platforms, which yielded more than 1,000 replies and more than 10,000 additional individual contributions from 27 MS and some non-EU countries. A large part of citizens and businesses that responded to the public consultation recognised and welcomed the benefits of online platforms. The public consultation allowed gathering feedback on the types of problems that can be faced by consumers and/or suppliers when using an online platform. The most common issues flagged are linked to a general lack of transparency including a lack of clarity as to the usage of data, unclear terms and conditions and privacy rules, uncertainty as to the identity of the trader, as well as misleading statements about advertising, the issue of fake reviews and the quantity of counterfeit goods, not corresponding to those expected by consumers. It has been also shown that the lack of traceability of traders on online platforms can bring some further problems, since it causes potential redress to be fruitless. Contributions made during this public consultation highlighted the need to improve enforcement of existing legislation as it would allow addressing many of the issues flagged. Greater clarity as to existing obligations under EU law (including around some definitions under the e-Commerce Directive, such as that of "content hosting") and better enforcement thereof were expressly mentioned as likely solutions to the identified problems.

Members welcomed these results and underlined the importance of legal certainty, particularly in relation to the liability of platforms and the application of consumer law. In particular, there was a proposal for the creation of a working group to check the results and the actual implementation, while it was stressed that a pro-competitive attitude would be beneficial.

Members also underlined the importance of platforms in enhancing price transparency and facilitating price comparisons. At the same time, it was stressed that platforms sometimes are problematic from a data protection viewpoint – e.g. opacity as to their commercial intent when collecting personal data for the purpose of transmitting them to third parties. Secondly, there can be lock-in effects, which in turn will increase switching costs for consumers and which could represent a severe issue because it is not clear if the Data Protection Regulation is strong enough on this point. Thirdly, there can be unfair commercial practices within the platform framework. Lastly, some anticompetitive business practices – such as foreclosure or bundling – can be implemented. DE provided some Court cases on this topic by email.

d. Collaborative Economy

The Commission gave an update on Collaborative Economy, reminding there is an ongoing study that is focused on the consumer perspective. It will provide evidence for the forthcoming Commission Communication. The shared view of all the members was that there is need for legal certainty to avoid legal fragmentation across EU countries. Some members pointed out the urgency of taking action. Their point was that a faltering position on this issue by the Commission side would facilitate legal fragmentation which must be absolutely avoided.

It was recalled that the legal uncertainty issue is important also for prosumers in this sector, since they might be unaware of their rights and obligations both towards peer consumers and the platform. In addition, DE provided some Court rulings regarding the question of when a private individual has to be considered as a professional trader when selling on online platforms. However, the legal fragmentation and uncertainty is visible in those decisions, since they are not on the same line.

e. ODR Platform

The Commission presented to members the state of play as regards the implementation of the consumer Alternative Dispute Resolution (ADR) Directive and the operation of the Online Dispute Resolution (ODR) platform. The platform managed by the Commission, opened for EU consumers and traders on 15 February. The Commission is actively working with Member States to achieve as soon as possible a geographical and sectoral coverage as complete as possible. The Commission explained that it was preparing an awareness-raising campaign aimed at consumers and traders, which will take place mainly on social media, and invited the members to support it. The Commission will keep the members informed of the activities, the bulk of which will start in June. Finally, it invited the members to report any feedback they might have on the functioning of the platform.

Replying to questions from members, the Commission clarified that the ADR Directive does not harmonise the nature of the ADR procedure to be implemented at national level and that it was not looking into the individual cases handled through the ODR platform.

f. The reform of the data protection legislation

The Commission gave a general presentation the Reform of Data Protection Legislation, and on the timetable: after formal adoption by the co-legislators in April 2016, the two instruments, the General Data Protection Regulation, and the Data Protection Directive for police and criminal justice authorities, will be published in the EU Official Journal on 4 May 2016 and will enter into application in May 2018. In particular the General Data Protection Regulation will enable people to better control their personal data. At the same time modernised and unified rules will allow businesses to make the most of the opportunities of the Digital Single Market by cutting red tape and benefiting from reinforced consumer trust. Some data protection principles and rules will remain unchanged, while some others will be enriched and reformed. This relates in particular, to the concept of controller's responsibility and accountability, processor obligations, the new right to personal data portability, administrative fines and an EU consistency mechanism to ensure uniform application of the rules.

4. Financial Services

The Commission presented a Green Paper on Retail Financial Services, outlining the issues for consumers and providers in accessing and supplying financial services across Europe. It was also pointed out not only that the current situation displays a high level of market fragmentation and a very low level of cross-borders interaction, but also that there is not an identification system for consumers willing to access financial services at a distance. Thus, the Commission is planning to come up with relevant measures to address issues identified in the consultation, also taking into account the quickly progressing digitalisation of financial services. The consultation highlighted that new businesses in this sector find it very difficult to expand cross-borders.

Members stressed that there is need for some supervision measures in order to forbid some potentially dangerous tying/bundling practices in retail financial services, which have the potential to make this market less transparent. There is also a need for one single distance identification system for consumers.

BEUC commented briefly on the use and the interpretation of information collected in the consultation, underlining that even if consumer representatives did not respond to the consultation in such high numbers as the financial industry, their views should be equally and duly taken into consideration in the analysis of results.

5. Energy

The Commission presented some results of an in-depth Study on the Functioning of Electricity Markets that is going to be published soon. The study covers a variety of areas: billing, offers, switching, comparison tools, energy vulnerability/poverty, prosumers and enforcement. As far as billing is concerned, the Commission displayed some results of a mystery shopping exercise held in 10 EU countries, representative of the entire European population. Two graphs in the billing part showed how some of the information either required under the 3rd Energy Package and the Energy

Efficiency Directive or recommended to be present by the Commission following the Billing Report of the CEF WG (December 2013) were actually missing.

As for offers, the presentation covered two issues: the comparability of offers and green offers. Some survey results were therefore displayed. 25% of respondents clearly stated that it was easy to compare different tariffs offered by their electricity company, but only 19% of them expressed that it was easy to compare offers from different electricity companies. Thus, comparing tariffs from different electricity companies is perceived as more difficult than comparing tariffs from one provider. When dealing with green tariffs, the situation across MS is heterogeneous, with some countries where it is very easy to find green offers and other MS where companies do not clearly state whether they offer such options or not.

When using a comparison tool, shoppers gained access to the offers of a larger number of providers and found a larger number of cheaper offers. However, the study shows that shoppers experienced difficulties to assess the benefits related to the choice of tariffs on offer.

Another important result shown in the study and presented to ECCG members was about switching. It appears clear that a great number of consumers were aware of their rights and that there is confusion among consumers on the exact rules for switching. Some Members pointed out that consumers may not understand that there are different energy suppliers.

As far as prosumers are concerned, the Commission pointed out that at EU level smart metering is not a well-known concept, but there are some MS in which it seems this feature is a common knowledge. In the end, when dealing with enforcement, some findings on the type of complaint that are common across MS were displayed.

Members were very pleased to observe the effort of the Commission in this area. However, they raised serious concerns about many consumers' lack of sufficient digital skills, preventing them from benefitting from the best available offers. It was pointed out that there might be a possible problem with the fact that consumers probably do not take into account the entire chain of the energy sector, but they look only at the final supplier. BEUC commented on this point, stating that companies along the production-distribution chain might blame each other for possible issues.

Some members underlined the delicate situation of prosumers, who must not be discriminated, but need to contribute to finance the grid with a fair share. Consumers should be incentivised to be energy efficient. In addition, tariffs should be structured so as to enable demand responsive behaviours, as well as to dis-incentivise non-responsive conducts. On top of these points, members stressed that network tariffs should distribute charges in a fair manner across different types of users (private households and/or industrial entities) and should be transparent on their exact composition. After the discussion, which also mentioned the presence of some "subscription traps" in the energy market, the Latvian member gave feedback from the Citizens' Energy Forum, which is considered as an important occasion for common discussion. This Forum has been becoming more and more political. The LV representative highlighted the differences between digitally skilled and unskilled people across Europe: 40% of European consumers have some difficulties with ICT tools, while 22%

have no skills at all. The Citizens' Energy Forum has been gaining importance as a reference point for stakeholders in this sector to face the challenges ahead. BE signalled interest to pin the ECCG subgroup on Energy.

6. The REFIT – state of play and timeline for deliveries of results

The Commission made a presentation on the REFIT Fitness Check of EU consumer and marketing law, explaining the future steps and introducing the current ideas for modernisation that could be addressed in the follow-up activities, subject to the conclusions of the Fitness Check. These ideas concern: simplification of information requirements, more transparent collaborative economy through clarifying the distinction between trader/consumer, enhancing the fairness of contract terms and commercial practices and the effectiveness of the injunctions procedure.

During the discussion, LU stressed the need for more harmonised enforcement rules and sanctions, as these are currently mostly left for national laws. In addition, LU and DK warned about the risk that businesses will use this REFIT to try to lower the consumer protection standards. LU pointed out that some trade organisations from Nordic countries, DE and AT are actively using the SG's "REFIT Platform" mechanism to advocate for lowering consumer protection standards, in particular of the pre-contractual information requirements and the right of withdrawal. BEUC and LU appealed to the ECCG members to counter this one-sided information by also contributing to the SG's REFIT Platform. DE informed that they are analysing the DE consumer case law with a view to contributing to the Fitness Check.

EL indicated that the Online Sales proposal was a bad start of the REFIT, as it would lower consumer protection in several countries. BEUC welcomed the presented list of priorities and said it will provide additional ones later on. BEUC warned against a simple extension of the online sales proposal to all sales. BG promoted the standard information form under the consumer credit directive, which could be extended to all contracts.

7. The Report on the functioning of the Consumer Rights Directive

FI pointed out that door-to-door and telephone sales are generating a considerable amount of costs and prevent consumer satisfaction. LU stated that a possible solution to this problem can be found in their legislation.

DE indicated some problems with implementing the CRD regarding the right of withdrawal. In particular, there is a grey area characterised by legal uncertainty as far as phone contracts and streaming subscriptions are concerned. The right of withdrawal in certain cases begins before the consumers actually receive the purchase confirmation. DE provided some Court cases.

The UK recalled some issues regarding the areas covered by the CRD. In particular, UK mentioned additional fees for certain payment methods, PAC codes for transferring a phone number and disappearing features (i.e. tech products that lose functionalities after software updates).

At the end of the discussion, ECCG members stressed again that it is needed to publicly repeat that the intention of the REFIT is to improve the effectiveness of consumer protection rules. The Commission explained that a specific study is looking into the Sales and Guarantees Directive and that vulnerability is one of the topics on the agenda regarding the UCPD. It encouraged members to be active in collecting case law, responding to the forthcoming Fitness Check consultation activities and also contributing to the SG's REFIT platform.

As far as the Consumer Rights Awareness Raising Campaign is concerned, some members highlighted that some Consumer Organisations could not take part in the communication activities promoted by the campaign because of financial constraints. Therefore, it was drawn to the attention that it could be useful to concentrate on specific actions, focusing on particular areas and leading to more concrete results. The UK expressed concern about the lack of obligation for businesses to show notices to educate people on their new consumer rights in their points of sale.

8. Points raised by ECCG Members

a. Air Passenger Rights

Luxembourg recalled the unfair terms in air contracts and asked for the position of the Commission on this issue. Furthermore, the member asked for clarification and pointed out the problem of national enforcement bodies, which seem to be competent for general subjects, but not for individual enforcement. The amount and the quality of information as well as the consumer care provided by airlines in case of extraordinary events were considered to be still extremely low.

A presentation on the Air Passenger Right Regulation Guidelines was made by the Commission, which pointed out that those guidelines are a priority since it is likely that the new EU Regulation will not enter into force before 3 years and that the current legislation is more than 10 years old. Some of its provisions have been subject to agreed practices with the evolution of air transport or have been profoundly affected by EU Court of Justice rulings which are active on this issue.

The Commission explained that those Guidelines deal with scope (geographical and material), events (e.g. cancellation, delay at the departure or at the arrival), rights associated to the events already mentioned (right of information, of reimbursement, care, compensation, rebooking and rerouting) and how consumers will be able to assert those rights (ADR, actions to national courts). Members welcomed these Guidelines, as they should ensure better application of the existing legal framework and allow for a more uniform application of these rules across EU.

BE drew the attention to the practice of considering the passenger responsible for the "no-show" even when this was caused by long security checks. The Commission stated that the partial no-show (e.g. no-show at the outbound flight will cancel automatically the return flight) will be addressed in the revision of the regulation, but not in the guidelines, while airlines should continue to have the right of cancelling some connected outbound flights. This is necessary because a too stringent legislation on this could prevent airlines from offering indirect flights. As for the security check issue raised by BE, the Commission reminded that those controls are carried out by the airport staff and

they are not related with single airlines, and therefore the latter cannot be held responsible for situations where the passenger could not reach the boarding gate on time.

The UK pointed out that they received some inputs by the EU Disability Forum regarding the regulation relevant to mobility for passengers with disabilities. In particular, passenger treatment at airports relies on enforcement, which is at MS level and must become a focus.

b. Notification of Draft non-harmonised national measures – French Bill for Digital Republic

The LU Member explained the functioning of the technical notification mechanism for draft regulations (TRIS), encouraging all members to sign up to news alerts that would allow them to follow the developments in all MS in specific areas such as consumer law. He also regretted the lack of transparency regarding the comments and detailed opinions provided by the Commission and referred to his exchange of letters with the Commission itself on that matter.

c. Collective Redress

The DE Member gave a presentation on the state of the play of collective redress in Germany. The main unsolved problems in this field were outlined and the DE member displayed the governmental plan to tackle them. Those unsolved problems regard cartels, consumers struggling to get compensation and the period of limitation. After having explained the main issue related to cartels, the DE member presented some criteria for new instruments of collective redress. In particular, it is needed a wide scope, as well as the suspension of the limitation period and the necessity to lower entry barriers for consumers claiming their rights.

Some members commented that courts tend to hesitate to take this kind of cases, the strong effort of Consumer Organisation notwithstanding. In addition, the Commission was asked to do more on this topic, since the big differences in approach that characterises Europe is unacceptable. Members agreed on the fact that direct extra-judiciary action usually brings better results and faster enforcement. Members encouraged the Commission to provide for a considerable legal improvement, giving consumer organisations solid bases to deal directly with businesses outside the judiciary system. Members consequently highlighted the preventive effect of legislation at EU level, since a common ground on this would guarantee a better enforcement, as well as a possible higher success of extra-judiciary settlements.

The UK recently adopted a collective redress mechanism for consumer who suffered loss due to a breach of competition law. The UK representative pointed out that though this measure has a narrower scope, as it was implemented before the Commission's Recommendation on collective redress.

9. Annual reporting by ECCG Members

The Commission thanked all members for their commitment shown in their Annual Reports which will be published soon. The Commission also invited members to send the Reports for the period July 2015 – July 2016 later this spring, as they need to be finalised before the end of the mandate in July.

10. AOB

Procedural details were given by the Commission regarding the renewal of the ECCG mandate this year. COM also reminded that the ECCG mandate has to be renewed by July 2016 and that the national authorities that had not yet sent in their proposals would be reminded to do so with immediate effect.

The Commission presented briefly the theme of the 2016 Consumer Summit (17-18 October 2016) and members reacted very positively to REFIT as the chosen topic and welcomed the opportunity for specific network meetings on the second day of the Summit.

Done at Brussels, 18 May 2016