



# European Consumer Consultative Group

## REFIT Fitness Check of EU Consumer & Marketing Law

13 – 14 April 2016

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# Fitness Check of EU consumer law

In January 2016, in the framework of its "Regulatory Fitness and Performance" Programme (REFIT) the European Commission launched a Fitness Check of the main (horizontal) EU Consumer and Marketing law Directives

## WHAT IS A FITNESS CHECK?

It is a comprehensive, evidence-based policy evaluation **assessing** whether EU legislation is “**fit for purpose**”.

It provides a basis for **future policy considerations**.

A **Fitness Check** is part of the regular EU policy cycle.



# Directives subject to Fitness Check

A common EU legislative framework sets the standard of **consumer protection and marketing** across the European Union.

Six key pieces of legislation are subject to the Fitness Check:

Unfair Commercial Practices Directive



2005

Misleading and Comparative Advertising Directive



2006

Unfair Contract Terms Directive



1993

Price Indication Directive



1998

Sales and Guarantee Directive



1999

Injunctions Directive



2009

# Objectives of the Fitness Check

Assess the overall **effectiveness**, **efficiency**, **coherence**, **relevance** and **EU added value** of the existing regulatory framework.

## Effectiveness



Have the objectives of the legislation been achieved?

## Efficiency



What were the costs and the benefits involved?

## Relevance



Does EU legislation address the main problems that consumers are facing today?

## EU added value



Did EU action provide clear added value?

## Coherence



Is the EU consumer legislation complementing or contradicting other policy and legislation?

# What has been done so far

- Official launch by the publication of a detailed "Roadmap" on 8 January 2016.
- Dedicated webpage established on DG JUST portal, including e.g. stakeholder feedback received on the Roadmap.
- Intra-Commission coordination through the Inter-Services Steering Group.
- Three supporting studies launched for data collection.

## Next Steps

- Online public consultation of 12 weeks – to be launched shortly
- Stakeholder consultative group to be set up – call for applications to be launched shortly
- "Consumer Summit" 2016 dedicated to the Fitness Check (17 – 18 October 2016).

## Next Steps (II)

- First priority related to the current negotiations of the **Digital Contracts Proposals** – provision of data on the Consumer Sales and Guarantees Directive 1999/44/EC.
- Adoption and publication of the **Fitness Check Report** in 2017 with the announcement of follow-up actions.

# Current ideas - to be explored (I)

## 1) *Simplifying Information:*

- Should we simplify the UCPD information requirements for the invitation to purchase in view of the more comprehensive pre-contractual information requirements under the CRD?
- Do we need to maintain the Price Indication Directive – can the "unit price" indication requirement be rather added to the CRD?
- Should we provide for a (binding or non-binding) graphical model for the presentation of advertising/pre-contractual information requirements (building upon work done on the Model for providing pre-contractual information on digital content under the CRD)?

# Current ideas - to be explored (II)

## ***2) Injecting Transparency into the Collaborative Economy:***

- Should we clarify the boundaries between "traders" and "consumers" by providing criteria as to when an individual's activity would qualify as a business activity?

# Current ideas - to be explored (III)

## 3) *Enhancing the Fairness of Standard Terms and Conditions (T&Cs):*

- Should we create a "black list" of recurrent and harmful standard T&Cs (especially in the online context) for easier enforceability by authorities and courts?
- Should there be a special duty of care vis-à-vis "vulnerable consumers" (like in the UCPD)?
- Should we provide for a (binding or non-binding) easy graphical model for the presentation of key standard T&Cs?
- Should we incorporate the key CJEU case law to strengthen the procedural protection requirements under the UCTD?
- Should the protection from Unfair Standard T&Cs be extended also to B2B?

# Current ideas - to be explored (IV)

## 4) *Increasing Fairness of Commercial Practices:*

- Should consumers have also the right to individual remedies (e.g. compensation and invalidity of the contract) in case they have been victims of unfair commercial practices?
- Should we improve the fairness also in B2B transactions, for example by:
  - Creating a **black-list** of unfair B2B practices?
  - Creating a specific **enforcement mechanism** for cross-border B2B cases?
  - Introducing rules on business protection **beyond the marketing practices**?
  - Should also businesses get a right to **individual remedies** in case of unfair commercial practices?

# Current ideas - to be explored (V)

## ***5) Enhancing the effectiveness of Injunctions proceedings:***

*Consumer organisations and/or public bodies use injunctions to stop breaches to consumer laws – should we improve this tool, for example by:*

- Extending the scope of the Injunctions Directive to cover more consumer laws?
- Reducing the costs and length of injunction proceedings, including for consumer organisations?
- Extending the effects of individual injunction decisions?

***Thank you for your attention!***