



EUROPEAN COMMISSION  
JUSTICE AND CONSUMERS DIRECTORATE-GENERAL

Consumers  
Consumer Strategy, Representation and  
International Relations

European Consumer Consultative Group (ECCG)

7-8 October 2015

Draft Meeting Report

**Modified 8 December 2015**

## **1. Welcome by the Chair**

The members adopted the draft agenda and the minutes of the meeting of 24-25 March 2015.

The Commission stressed the importance of the participation of all ECCG members to the meetings (or, in cases when they are unavailable, of the attendance of the Alternate Member) so that ECCG members can fulfil their mission of informing their national constituency. Letters will be sent to the national consumer authorities to address the issue of frequent absences. It was highlighted by ECCG members that national authorities would also need to share more information with national consumer organisations. The Commission will raise this issue with the Consumer Policy Network in their next meeting in December.

## **2. Update on Consumer Policy Actions (Part 1)**

The Commission gave a brief update on the content of the Digital Single Market Strategy and updated the ECCG on the state of play in the preparation of the Digital Contracts Proposal, currently in the Impact Assessment phase. Several members raised strong concerns as to the scope and objective of the proposal in relation to tangible goods, in particular the period for the reversal of the burden of proof, the hierarchy of remedies and the guarantee period. They voiced their opposition as to the possibility that the Commission's proposal could reduce consumer rights in relation to guarantees if the Commission's goal is to fully harmonise the current minimum harmonisation level of the Consumer Sales and Guarantees Directive. Some members particularly stressed the benefits of the current higher level of consumer protection in some Member States, for instance in relation to the length of the reversal of the burden of the proof. The feedback was more positive in relation to the Commission's approach to guarantees and remedies for digital content.

On-going consumer market and behavioural studies on terms and conditions (a study assessing consumers' attitudes with T&Cs) and vulnerability (a study on assessing consumer vulnerability across key markets in the EU and another one on online marketing to children) were also presented. Members welcomed the launch and preliminary results of such studies and asked a few clarifications on their scope, coverage and how the Commission intends to use the results, once finalised.

### 3. Thematic discussion: Digital Single Market (platforms and geo-blocking)

The Commission gave a presentation on the purpose of the public consultation recently launched on **platforms, the liability of intermediaries, free flow of data and collaborative economy**. As announced in the Digital Single Market Strategy, the Commission aims to assess the role of platforms in the digital ecosystem. The particular issues that have been looked into relate to the effects of platforms on the economy, their transparency and their potential role as gate-keeper. The Commission stressed that, at this stage, no legislative follow-up is foreseen as the aim is really to gather facts also about fragmentation of the market, as well as opinions, and especially those of consumers and consumer organisations.

Members stressed the difficulty to enforce consumer legislation on platforms, notably in a cross-border context. They also called for better market surveillance of these operators. It was also explained that some platforms understand now their role as market-places and put in place voluntary guarantees for consumers purchasing from a provider referenced on their website. This was seen as a case against over-regulation. Examples of national experiences were also given, such as mystery shopping in Austria, demonstrating the lack of transparency and compliance of platforms (such as in relation to the display of price or the ranking methodology) or platform-related competition cases in Ireland. The Netherlands also asked whether consumers should have to pay as part of their subscription all the advertising that is displayed to them online. Sweden also raised issues in relation to the collaborative economy and the risk that some platforms may do “social washing” to attract users. Consumers also need to be better protected when they use cloud services (e.g. in case of data loss). BEUC clarified that they would not want the e-commerce Directive to be amended but recognise the need to clarify the liability of intermediaries. France and Luxembourg also mentioned the French decree recently notified to the Commission on the transparency of comparison tools. The Commission explained that the decree is currently being scrutinised.

The Commission took note of the comments on platforms and particularly stressed that, as regards enforcement, the review of the Consumer Protection Cooperation Regulation will be instrumental to better equip national enforcers and improve cross-border enforcement. It also stressed that competition law as an important role to play with regard to these operators as demonstrated by recent and ongoing cases.

The public consultation on **geo-blocking** and other geographically-based restrictions was also presented. The aim is to look at measures put in place by companies which restrict consumers’ access to offers in the Single Market. The purpose is to gather evidence and views as to what practices could be justified or not and what should be the Commission’s response to it. As announced in the Digital Single Market, the Commission intends to table a legislative proposal mid-2016 to tackle unjustified geo-blocking. This will be complemented by actions to be announced in the forthcoming Internal Market Strategy. It was however stressed that the action on geo-blocking is not tackling copyright-related issues which will be dealt with separately. In addition to the public consultation, the Commission is also running a mystery shopping exercise to gather additional factual evidence on the occurrence of geo-blocking.

Luxembourg stressed the relevance of the experience on passive sales in the car sector for the geo-blocking debate and suggested to re-use materials developed on this occasion. The link was also made with the access to pan-European after-sales services and the use of guarantees. The Netherlands also stressed the need to refocus the geo-blocking debate on the problem of consumer access rather than free enterprise.

The Commission then clarified the purpose of the ongoing e-commerce sector inquiry. Its purpose is to focus on barriers put up by companies (e.g. pricing behaviours, contract terms). 2,500 questionnaires have been sent to merchants, online content providers, online platforms and price comparison tools. Preliminary report and public consultation are foreseen for mid-2016, the final report is due beginning of 2017. Results will inform competition policy and complement the legislative initiative announced in the Digital Single Market Strategy but the Commission will also not shy away from taking enforcement actions against operators infringing competition rules.

Members warmly welcomed the launch of the inquiry.

#### Conclusions:

- The Chair thanked the members of the ECCG for their contributions during the presentations on platforms and geo-blocking.
- ECCG Members were also asked to provide their input to the two public consultations and share them as widely as possible with their national counterparts.

#### **4. Address by Mrs. Věra Jourová, Commissioner for Justice, Consumers and Gender Equality**

Commissioner Jourová stressed how much consumer policy should be a priority for national governments. She also thanked the ECCG for its views on the Digital Contracts Proposal and explained the aim of the Commission in relation to digital content and tangible goods. She also informed that enforcement remains a key priority for the Commission as exemplified by the review of the Consumer Protection Cooperation Regulation next year. Consumer policy is being mainstreamed in other areas such as energy (where the focus is on energy poverty, access to energy and collective switching) and circular economy. The Commission is also closely following the state of implementation of the Alternative Dispute Resolution Directive (ADR) by Member States. Timely implementation and notification of the ADR bodies is crucial for the launch of the Online Dispute Resolution (ODR) Platform early 2016. The Commissioner provided an update further to the ruling of the European Court of Justice on the Safe Harbour Agreement.

BEUC encouraged the Commissioner to keep a strong position towards the USA on data protection. Several members raised again their concerns that the Digital Contracts Proposal runs the risk of reducing the level of consumer protection for tangible goods. Moving the reversal of the burden of the proof from 6 months to 2 years is fundamental. The Commission needs to be ambitious with this proposal or else it risks letting European consumers down. **On the reversal of burden of proof, some members took the floor to defend their current rules, such as two-year length for the reversal of the burden of proof, whilst others advocated for a two-year period to render the guarantee protection more effective. Other members also took the floor to ask for a higher level of consumer protection with regards to guarantees.**

The Commissioner was also asked about the different quality of products between Member States, whether the Commission had plans to further work on collective redress and how she viewed consumer protection in relation to sustainability. The Commissioner clarified that collective redress will be further looked into next year. She clarified that the different levels of quality for a product was a matter in the hand of Member States and, ultimately consumers, but the Commission is looking at this aspect

nonetheless for food products. On sustainability, the Commission is intensively looking at what to do in the context of the circular economy. The focus should rather be on quality consumption rather than quantity.

## **5. Update on consumer policy actions (Part 2)**

Further clarifications were made by the Commission on the objective of the Digital Contracts Proposal.

Members stressed again the need to be much more ambitious and not reduce existing consumer rights. A key issue is the reversal of the burden of the proof, which for many members should be of the same length of the legal guarantee, e.g. 2 years.

Further updates were also provided in relation to the implementation of the Alternative Dispute Resolution Directive and Online Dispute Resolution Platform. Some Member States are late with the transposition of the Directive which is delaying the notification of ADR bodies to the Commission. Nonetheless from a technical point of view the development of the ODR platform is on-track with a series of tests that have been completed.

The Commission also provided information on the outcome of the workshop on the Guidance of Unfair Commercial Practices Directive organised in September. The Guidance should be published in spring 2016 and will take on board the work of the two Multi-Stakeholder Dialogues on green claims and comparison tools.

An update was also provided on the adoption of the Package Travel Directive, of the positive results of the Consumer Rights Awareness Campaign, of the outcome of the Consumer Protection Cooperation action on car rental and of the review of the CPC Regulation. The Commission in particular stressed that it is looking at how to better involve consumer organisations in enforcement actions. Finally, an update on the Consumer Champion was given and ECCG members were encouraged by BEUC to use the platform. Feedback from users will be put on the agenda of the next ECCG.

## **6. Luxembourg Presidency Event**

A summary of the outcome of the Luxembourg Presidency “Competition and Consumer event”, where the focus was on platforms and geo-blocking, was presented.

## **7. Thematic discussion: Financial Services**

### Update on the Capital Markets Union (CMU) initiative

The Commission gave an update on the Action Plan, published on 30 September and accompanied by an economic analysis paper and the summary of the responses to the CMU Green Paper. The action Plan also announced the upcoming Green Paper on Retail Financial Services, which will be published before the end of the year and, on the same day, the Commission adopted legislative proposals on securitisation and a Solvency II delegated act on infrastructure investments, while also launching three consultations on: European covered bonds, EuVECA/EuSEF regulations and a call for evidence on the cumulative impact of recent EU legislation in the field of financial services.

The Commission presented the CMU objectives and pointed out that consumers should get transparent and comparable information on retail investment options and information on market trends such as on the past performance of long term retail and pension products. They should have access to a range of suitable

and cost-effective investment products and affordable and independent advice. It also underlined the importance to sustain the EU pension systems by supporting the development of the European personal pension market.

ECCG members warned the Commission that the call for evidence on the cumulative impact of recent EU financial legislation might result in a call for deregulation from the industry and underlined that the Capital Markets Union initiative should also focus on consumers/retail investors since they are one of the main sources of funding.

Several members pointed to recent cases of mis-selling of financial products where industry had deliberately introduced confusion between risky investments and saving products. Members identified affordable and independent financial advice and unbiased distribution channels as a key area where further action is needed, given that information to consumers only works to a limited extent and consumers tend to trust information provided to them when making complex financial decisions. Members also pointed out that recent legislative measures (e.g. MiFID II) will not suffice to solve the problem after they are implemented. In this context, members also stressed the need to fully ban inducements. Members stressed that in any case information to consumers will never be able to address the information asymmetry between consumers and industry and that a majority of consumers were vulnerable when dealing with financial products, and not sufficiently alerted about the risks.

Many members pointed at the need to properly enforce rules already in place, while others stressed that consumer organisations do not have sufficient capacity to help consumers. Several members also asked the Commission to work on concrete problems for consumers, such as over-indebtedness, collective redress and financial advice.

On pensions, members called for action on third pillar pensions and strongly insisted on the need to have standard and simple products with real returns.

The Commission stated that the aim of the CMU is to create the right conditions for those consumers willing to invest in the Capitals Market. It underlined that recently adopted legislations such as MiFID II will improve the way investment products will be distributed to retail investors (strengthened inducement rules, concept of independent financial advice etc.). The CMU Action Plan provides for reassessing the functioning of the EU retail investment market once this new legislative framework in place. It also recognised that duly enforcing the single rulebook for capital markets is key and that unbiased financial advice should be developed to the full benefit of retail investors..

#### Retail Financial Services: State of Play of the Commission Green Paper

The Commission decided to act on retail financial services given that national markets are still fragmented. There is a huge difference of prices across Member States and several barriers to cross border access still exist (e.g. languages, tax, geo-blocking, need for more transparency, complex products, need for independent advice, tying and bundling practices, inefficient redress). The Green Paper consultation will seek views on how to give consumers access to better products, better quality and lower prices. It will be published by the end of the year and will focus on digitalisation and innovation, competition, transparency, choice and redress. On the basis of the outcome of the consultation, the Commission will then identify actions to be taken.

Members stressed that terms and conditions should be provided in time before entering into a contract – not at the time of the purchase, and put forward the need for independent financial advice and comparison

tools. They signalled that enforcement is key but also stressed that more should be done in the field of over-indebtedness. Several of them referred to the impact of payday loans and quick loans on vulnerable consumers. They also warned that innovation is used by the industry as an excuse to avoid standardisation of products.

They flagged that there is a lack of cross-border access to mortgages and suggested to investigate further the idea of credit databases while signalling that the lack of credit history is often used as a pretext not to grant credits to consumers. They warned that domestic systems are not interoperable and this constitutes an obstacle to further integration. On bank accounts, they called for bank account portability and for universal basic payment accounts to counter geo-blocking.

Some members also commented on the language issues, asking for terms and conditions to be summarised in all EU languages.

On over-indebtedness, the Commission referred to the current work on insolvency and indicated that it was reflecting on further action on debt advice following the workshop on this issue at the 2015 Consumer Summit. It also agreed that it is important to look at how credit-worthiness is assessed and stated that, in the context of the retail financial services initiative, it will also be important to look at the issue of distance marketing of financial services; in this context the Commission has circulated a questionnaire to national authorities and the preliminary findings from the replies received show that more and more contracts are being sold at distance. As regard the access to bank accounts, the Commission pointed to the future entry into force of the Payment Accounts Directive. On the language issue, the Commission referred to the Multilingual Digital Single Market as an initiative to extend machine translation to the private sector in order to provide a solution to this situation.

#### The implementation of the new Directive on Mortgage Credits

The Commission gave a presentation on the Mortgage Credit Directive (MCD), the sister directive of the Consumer Credit Directive (CCD).

The Commission further pointed out that the MCD will come into force in 2016 and that the Commission is currently working with Member States on its transposition.

The MCD builds on several aspects of the CCD such as its information requirements with respect to pre-contractual information and advertisements. New elements introduced by the MCD are: requirements for foreign currency loans, tying and bundling, remuneration obligations, knowledge and competence requirements, and provisions on arrears and foreclosures.

Regarding the foreign currency loans provisions, the Commission stressed that they only apply to mortgages taken out after the directive comes into force. Therefore, foreign currency loans associated with the recent mis-selling scandals in Eastern European Member States are not covered.

Members remarked that because the MCD provisions on foreign currency loans only apply to loans sold after the MCD comes into force, there is an issue about how to address those loans that have recently been mis-sold as part of the big mis-selling scandal that have impacted many consumers in a far-reaching way. Some members pointed out that national authorities have not been correctly transposing the early repayment provisions of the MCD and asked to the Commission to look into this.

The Commission replied to these concerns on the foreign currency loans associated with the recent mis-selling scandal that several Member States are taking national measures to address the issues linked to this. The Commission pointed out that national measures in this regard are allowed under EU law as long as they are proportionate (to meet the EU free flow of capital rules).

#### Consumer Credit Directive – Outstanding Implementation issues

The Commission conducted a study, which was published in 2014, on the state of play of the enforcement of the CCD in the Member States. This study looked at creditors' compliance with the informational requirements set out in the directive for advertisements and pre-contractual information. The study found that many advertisements did not meet the informational requirements and also lacked clarity. Regarding the provision of pre-contractual information, the study revealed that there is also poor compliance with the pre-contractual information requirements of the directive as well. The weakest results were recorded with respect to credit cards.

Furthermore, the Commission highlighted that a consumer survey was also conducted for the Commission report. This survey revealed that while consumers claim they are well informed, in reality they don't know if they have been provided with the essential information. This is important because the better informed consumers are the better are creditor compliance scores of creditors.

Many members pointed out that quick loans (instant loans, payday loans, etc.) are an issue and that vulnerable consumers often do not compare and choose products but instead just take any loan they are offered and can get. Other members remarked that the pre-contractual information for loans is often not provided before but only at the point when the actual credit contract is signed. They also pointed out that interest rates on loans are often too high.

#### Mis-selling and unfair contract terms in financial products

The Commission then provided a presentation on the Unfair Commercial Practices Directive (UCPD) and Unfair Contract Terms Directive (UCTD) and how these two directives are applied to financial services. The Commission explained that the UCPD is a safety net for consumers against mis-selling. The UCPD has high due diligence requirements for traders and stipulates that any information provided to consumers must not be unclear, false, unintelligible or ambiguous.

In terms of the UCTD, the Commission explained that a term in a contract which has not been individually negotiated is unfair and not binding, if it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer. The contract normally continues to exist, however, if it is capable of continuing its existence without the unfair terms. Contracts must be drafted in plain, intelligible language, i.e. the consumer must understand the economic consequences of the contract.

The Commission further pointed out that unfair terms must be assessed ex-officio, i.e. when a case about an unfair term is brought before a court, the court must assess the terms, regardless of whether the case has been raised by a consumer or not.

Participants then took the floor to provide comments and pose questions. One member pointed out that providers often still use terms even after they have been ruled as unfair by courts. Others highlighted that in regards to excessive/unfair charges, there are problems with respect to mortgages and investment funds. Many remarked that courts often do not hear cases ex officio. Furthermore, they asked if the Commission would do anything to promote the correct implementation/enforcement of the CCD. In some

Member States there are huge problems with mis-selling by non-banks (due to the fact that these entities are often either not regulated at all or not regulated/supervised sufficiently) and consumers don't go to court to raise a case about unfair terms.

The Commission responded that certain aspects of the UCTD and UCPD will be looked at within the framework of the better regulation/refit exercise. For example, the question of the validity of a contract where a term or terms have been ruled as unfair will be assessed. Furthermore, the complexity of contracts for financial services products would also be looked at.

#### Conclusions:

The Chair thanked the participants for the fruitful discussion on financial services and took note of the most important issues discussed during the morning session:

- Independent financial advice: ECGG members highlighted the need for further action to ensure that consumers are provided with reliable information about the complex products they are about to purchase, especially after the recent cases of miss-selling of financial products. Members also called for a ban on inducements;
- Transparency and Information: reference was made to the importance of providing consumers with transparent and comparable information on the main features of a financial product, while stressing the need to provide this information before entering into a contract so that consumers are not overloaded with documents they can hardly understand at the moment of purchase;
- Personal pensions: members asked for transparency on real returns and for simple and standard products, given that –as also shown by the relevant 2014 Better Finance Study- the actual performance of these products is unknown to consumers and often negative when taking into account inflation, taxes and charges.
- Simple and suitable investment products: members called for simple and standardised products which are suitable for consumers. Furthermore, they pointed out that consumers should be better protected with respect to risky products such as payday/instant loans.
- Regulation/supervision of non-banks: members highlighted that there are problems with non-banks selling financial products. These entities are often not regulated or sufficiently regulated, leading to mis-selling of financial services products.
- Credit-worthiness assessment for access to cross-border products: Members remarked that much of the mis-selling of credits (especially in regards to riskier credit products such as payday loans) is the result of a lack of adequate creditworthiness assessments.
- Over-indebtedness: several members stressed that more must be done to fight over-indebtedness. Building on the 2014 Commission study, DG JUST is reflecting whether to create a multi-stakeholder dialogue on the issue.

The Chair announced that, given the interest shown by members, one option could be to establish a permanent ECGG subgroup on financial services.



## **8. The 2016 Netherlands Presidency of the Council of the EU – Presentation**

The Netherlands Attaché gave a general overview of the priorities relating to consumer policies in the upcoming Presidency of the Council of the EU, namely the internal market especially the digital single market, energy and better regulation. In their view Consumer policy is engrained in these policies.

## **9. Thematic discussion: Energy**

The Chair explained that following the last meeting's discussion on Energy Union, consumer issues were fed into the New Deal Communication.

The Commission's expert from DG Energy gave an outline of the Energy Union strategy. He explained that it has five pillars, including a more integrated energy market and energy efficiency. The Summer Package included a public consultation on new market design: wholesale markets, organisation of energy system, etc., while the public consultation at the end of 2014 focussed on consumer issues. The New Deal focuses on consumer-related issues that need to be incorporated in a legislative framework; it covers best practices on micro-generation, etc.

The New Deal addresses obstacles to active consumer engagement, and includes input provided by the ECCG. A new brochure summarises key rights for consumers; it is available in all languages and features on the DG Energy website.

For smart meters, Member States provided details of rollout until 2020 for electricity and gas. 195m electricity smart meters are foreseen across 16 Member States, three of which opted for selective rollout. Approx. 40% of consumers will have gas smart meters. Careful follow-up and implementation is necessary e.g. meters must comply with functionality requirements to ensure consumers benefit. Meters for remote reading are more useful for suppliers or DSOs than for consumers. Consumer trust in smart meters is needed and everyone involved (including the ECCG) need to promote the benefits.

When it comes to the Commission's internal process, DG Justice and Consumers is working closely with DG Energy on this topic, with studies on the drivers of vulnerability, and electricity markets; first conclusions will be given at the meeting of the ECCG sub-group meeting on 19 October 2015. Regarding bills, there is a lack of information about costs that prevent consumers being more active. The Commission will build on previous billing work e.g. comparability so consumers have a better idea of their expenditure. Offers are not easily comparable but we could use an APR metric for this. As regards Guarantees of Origin for RES, we will address how to present them in retailer offers. For switching, we may need independently certified comparison tools. The multi-stakeholder group on comparison tools has addressed this. In each member state there should be at least one such tool. With smart meters, consumers will know more about their profile, and switching will be easier and less costly; consumers will be less sticky.

Some members mentioned the problem of controlling tariffs and smart meters. BEUC raised the issue of comparability of offers with EURELECTRIC and Eurogas. Transparency, self-generation etc., will result in a huge transformation of energy market. Energy companies will no longer be the major suppliers. Future-proof policy is also needed e.g. for bundled services; consumers must not be locked into a single company. BEUC raised the issue of smart homes/appliances and how the impact on consumer legislation needs to be addressed. The Commission confirmed that the smart consumer is a challenge, probably the biggest one for REFIT. This has also been tackled in the Energy Union strategy. Members also took the floor to raise

concerns on the use of smart meters and to give a brief state of play in their Member State, in particular on energy poverty, scams, smart meter interoperability and standardisation, vulnerable consumers, collective switching and comparison tools. On the idea to have a comparison tool at EU level, the Commission explained that such a tool would take years to develop. At least one accredited public comparison tool has been defined in legislation. This would be a breakthrough for energy if it were to be replicated.

#### Conclusions:

- Consumers continue to face a number of difficulties when engaging with energy markets. These will be addressed through, inter alia, the New Deal for Energy Consumers.
- The first findings of recent studies into vulnerability and electricity markets will be presented at the next ECCG sub-group meeting.

### **10. Reform of data protection rules in the EU**

The Commission explained that the engagement of the ECCG is appreciated because consumer organisations have direct access to problems faced by citizens, especially when risks are invisible. The Commission also gave a state of play of data protection reform and explained that the text is currently under negotiation between the European Parliament and the Council. The Commission encourages consumer organisations to put forward to national governments and MEPs the real problems faced by consumers in this area. BEUC supports the Commission in its efforts to ensure a strong Europe against all attacks. Members raised their concerns in this regard and there was consent that there is an urgent need to upgrade data protection rules to face the current and future challenges.

### **11. AOB**

Dates for next ECCG meetings will be notified in due course. In the meantime Members are invited to send in their proposals for topics to be raised in future meetings.