



# **Refit follow-up: Ongoing work on possible targeted legislative interventions**

European Consumer Consultative Group  
12 October 2017

Joachim Nilsen Frislid  
Unit E2 "Consumer & Marketing  
Law"  
DG Justice, European Commission

# Conclusions from 2017 Fitness Check

- **EU consumer and marketing law largely *"fit for purpose"*:**
  - *if* effectively enforced and applied
  - also in DSM context
    - ✓ UCPD Guidance
    - ✓ joint enforcement actions (CPC)
- **Scope for improvement**
  - Enhancing awareness
  - Stepping up enforcement
  - Targeted amendments of substantive consumer law directives & revision of Injunctions Directive

# Enhancing awareness

- Pilot project on training SMEs 
- Consumer Law Database (EU e-Justice portal) 
- Training and capacity-building of legal practitioners 
- Self-regulatory project on better presentation of consumer information and T&Cs
- UCTD guidance 

## Better presentation of consumer information and T&Cs

- Self-regulatory project: Runs in parallel with IA work.
- Launched in April 2017 – results expected by end 2017/early 2018.
- Led by business associations (members of the Refit Stakeholder Group).
- Aim: business + consumer representatives to agree on *"Guiding Principles for better presentation of information to consumers"*.
- If unsatisfactory outcome: EC will consider legislative intervention.

# Impact Assessment: Targeted Amendments

## ➤ 5 areas for follow up based on Fitness Check + CRD evaluation:

1. More **transparency on online marketplaces**;
2. Ensuring consumer protection in contracts for "**free**" **digital services** (for data, not money);
3. EU-wide **rights to remedies** for consumers harmed by unfair commercial practices;
4. More proportionate, effective and dissuasive **financial penalties** for breaches of consumer law;
5. **Simplify** some rules on pre-contractual information and right of withdrawal.

# 1. More transparency on online marketplaces

## What's the problem?

- Many **consumers do not know**:
  - Who the **parties to the contracts** are;
  - If **consumer rights** are applicable;
- Consumer detriment (if something goes wrong, consumers do not know which rights they have and whom to claim them from);
- Costs for traders due to lack of legal certainty.

## 2. "Free" Digital Services

- CRD not applicable to contracts for digital services against personal data: *e.g. social media, cloud storage, webmail*
- **What's the problem?**
  - **Lack of consumer protection** - no right to pre-contractual info & no right to withdraw = **great potential for consumer detriment**
  - CRD Study: digital content: **consumers do not feel well protected** – digital services probably even worse
  - Not a **level playing field** between "traditional" and newly emerging business models
  - Problem will be magnified when Digital Content Directive arrives (includes contracts for FDS + "free" digital content)

### 3. EU-wide rights to remedies under UCPD

#### ➤ What's the problem?

- Existing **national remedies** = **not effective enough** to ensure that consumers harmed by unfair commercial practices can enforce their rights.
- National remedies often involves cumbersome procedural requirements = **many consumers don't want to go to court.**
- **High incidence of UCPD breaches** + lack of EU-wide remedies = **no** or **differentiated** redress for consumers harmed by same breach and same trader in different Member States.
- Divergent national rules = legal uncertainty + costs for traders operating cross-border.



## 4. More effective financial penalties

### ➤ What's the problem?

- **Criteria and levels of penalties vary** between MS:  
Example: Max. fines for infringing UCPD:
  - PL: up to 10% of annual turnover
  - AT: max. 2900 EUR
- Undermines cross-border enforcement cooperation under the **revised CPC Regulation**.
- Hinders the effectiveness of EU consumer law by **not being deterrent enough to prevent infringements**.
- Traders do not have a **level playing field** across the Internal Market.

## 5. Simplifying some rules and requirements

### ➤ What's the problem?

- Costs for traders: UCPS and CRD requirements to **provide same information** at both advertising and pre-contractual stage:
  - info on complaint handling + trader's geographical address.
- **Outdated** info requirements under the CRD:
  - Trader's fax number + e-mail address if more modern means of communication available.
- Costs for traders: CRD **right of withdrawal**:
  - Traders must reimburse consumers without first being able to inspect returned goods.
  - Consumers may abuse RoW by returning products after using them more than necessary.

## Our consultation activities

- **Overall: 759 replies (tbc)**
- *Open public consultation*: closed 8 October: **415** replies (+ some by email);
- *Surveys for traders*:
  - *SME panel consultation*; closed 1 October: **291** replies;
  - *"free" digital services + online marketplaces*: Both closed 1 October: **8** replies;
- Consultations in *CPC, CPN, ECCG and CMEG networks*: closed 1 October: **45** replies.
- Meetings with Member States (July, September, October).
- REFIT Stakeholder Group (June, September, October).

## Input from ECCG consultation

- **9** replies from ECCG Members;
- **Show support** for all the suggested targeted amendments;
- Transparency on **online marketplaces**;
  - All ECCG respondents: consumers often/sometimes experience problems when buying on online marketplaces;
  - Typical problem reported in complaints received by ECCG members:
    - Consumers don't know which rights they have and who is responsible if something goes wrong.

## Input from ECCG consultation (2)

- **"Free" digital services** (contracts for data, not money):
  - Better consumer protection is *necessary*;
  - Consumers should to be able to test digital services and *withdraw* within 14 days.
  - *Pre-contractual information rights* are necessary.
- **Remedies for UCPD breaches;**
  - Majority of ECCG respondents: consumers *rarely use existing national remedies*;
  - Consumers are *reluctant to go to court* (procedural requirements make it difficult and intimidating).
- **Penalties for breaches of consumer law;**
  - Current penalties are *not* sufficiently proportionate, effective and dissuasive.

# Injunctions Directive: possible revision

- Procedure to "stop and desist" breaches of EU consumer law that harm collective consumer interests.
- **Fitness Check:** full potential of the Directive not reached: Directive should be made more efficient and effective.
- Could be done by expanding the scope and making the injunction procedure cheaper, quicker and more effective.
- Results of **upcoming evaluation of 2013 Recommendation on collective redress** to be taken into account.

## Next steps

- Full analysis of all 759 replies to the consultations;
- Impact Assessment (ongoing);
- Possible revision of the ID, taking into account upcoming evaluation of 2013 Recommendation on collective redress;
- Possible legislative proposals (March 2018)

*Thank you  
for your attention*