



Enforcement cooperation State of play

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Revised CPC Regulation Key steps

Finalise adoption

- End June 2017 : EP and Council compromise
- Jurist linguist revision on-going
- Nov 2017: adoption in EP plenary
- + 24 months : entry into application

Prepare implementation

- Assist MS for implementation: legal workshops on new powers, co-financing of capacities, study visits
- Develop market surveillance tools to support the alert function
- Prepare new implementation measures for managing the cooperation process via the IT system
- Redesign IT system
- Raise awareness of other potential contributors

Main changes in the new CPC?

Scope

- Inclusion of short-lived practices
- extension of the annex to article 20 of the Services directive, some financial services & passenger rights
- Clarification of the notion of widespread infringements

Powers

- Closing down websites
- Mystery shopping
- Obtaining full information on site owners
- Receiving commitments on consumer compensation

Coordination in case of widespread infringements

- New EU level procedures based on alerts by MS or the Commission
- In case of EU dimension: notification and coordination by the Commission of an investigation and action is justified

External Alerts – Market surveillance

- Consumer and traders associations may be entitled to signal issues
- Coordination of priority plans

Future role of consumer organisations

General statement on key role

- Recital 23 : "Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests"

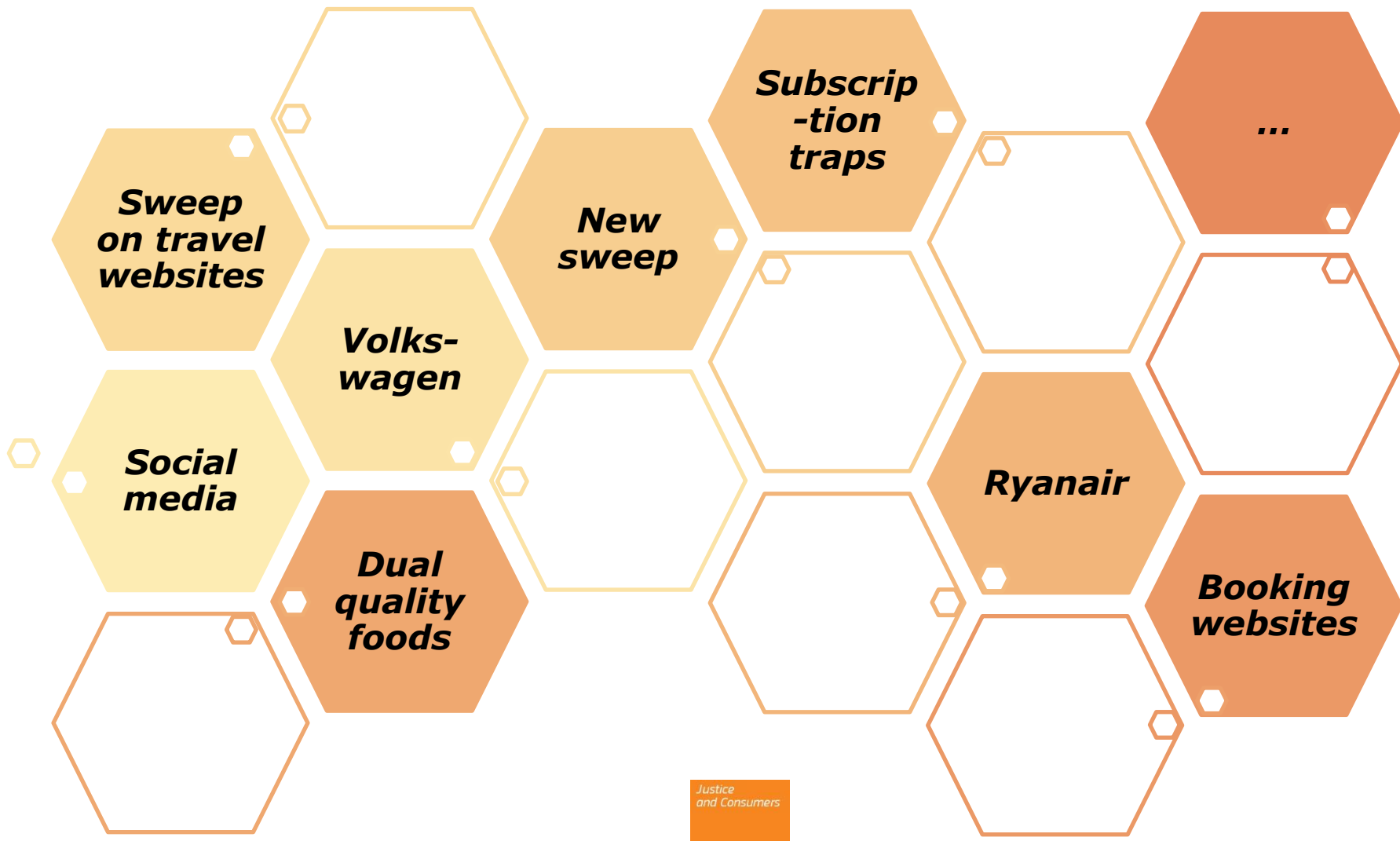
Consultation role

- Power to consult on commitments : Article 8.6 – Competent authorities may consult consumer organisations about the effectiveness of the proposed commitments
- When to consult ?
 - Article 17.4 : in Investigation measures in coordinated actions, on the common position.
 - Article 18.2a : in coordinated actions, on proposed commitments
 - Article 18.4 : in coordinated actions, to verify whether the steps taken by the trader are in line with the commitments.

External alerts

- Entitlement: Article 35. 1: Member States shall, unless otherwise justified, entitle consumer organisations and associations to notify suspected infringements relevant to the Regulation
- Notification of entities to the Commission: Article 35.1
- EU level associations: Article 35. 2 : The Commission, following a consultation with Member States, shall entitle associations representing consumers at a Union level

ON-GOING CPC Actions





Commission's Notice on the application of EU food and consumer protection law to the issue of Dual quality of products – the specific case of food

C(2017) 6532 final - adopted on 26 September 2017

Objectives of the guidance

Facilitate the practical application of existing legislation to the issue of dual quality of products – with a specific focus on food

Propose an articulated approach to sector specific and general consumer protection laws to raise the awareness and understanding of stakeholders

Encourage National Competent Authorities to cooperate nationally and cross border in order to address the issue

Applicable legislation

Unfair Commercial Practices (Directive 2005/29/EC)

A commercial practice shall be unfair if a) it is contrary to the requirements of professional diligence and b) it is likely to materially distort the economic behavior of the average consumer

General Food Law (Reg n.178/2002)

Consumers must be accurately informed and not misled as to the composition and characteristics of the food product offered on sale

Food Information to Consumers (Reg n.1169/2011)

General labelling rules and requirements including mandatory elements such as weight, list of ingredients, etc...

What products could be problematic?

products that have:

- a seemingly identical presentation;
- are marketed under the same brand;
- but have significant differences in composition and/or sensory profile.

Commission's JRC is working on guidelines for a common testing methodology, as a step towards comparable and authoritative tests across the EU.

Case by case assessment under the Unfair Commercial Practice Directive

*The product **significantly deviates** from the legitimate expectations consumers have as compared to a "**product of reference**"*



The trader **omits or fails to convey adequate information** to consumers and they cannot understand that a difference with their expectations may exist



This is likely to distort the economic behavior of the average consumer

Product of reference (useful criteria)

*a product is marketed **under "the same packaging and branding"** in several Member States;*

*that product is sold **in the majority of those Member States** with a given composition; and*

*consumers' perception of the **main characteristics** of the product corresponds to the composition of that product such as advertised in the majority of those Member States.*

What main characteristics of branded products matter for consumers ?

Subjective opinion formed through the sensory experience of each consumer, dietary preferences and factors such as exposure to brand advertising.

But studies made on brand loyalty demonstrate that brands act in the mind of consumers as a certificate **for a controlled and constant quality.**

Therefore, consumers expect branded products to be of **equivalent quality** if not exactly the same

In addition, in the Single Market, consumers **do not, a priori, expect branded products to be differentiated.**

“Significant variation”

it may change based on the facts and circumstances of each case but it can generally be found when:

one or a number of key ingredient(s) or their percentage in a product differs substantially as compared to the **“product of reference”**;

this variation has the potential to alter the economic behaviour of the average consumer who would take a different purchasing decision if he/she were made aware of such difference.

Possible unfair practices

Enforcers should assess on a case by case basis

- *all facts and circumstances*
- *including the rationale behind product differentiation*

Elements to be taken into account

- Presentation of a product or its advertising stressing its uniqueness
- Product with different quality grades without enough information to consumers on which grades are available on their local market
- Significant changes of the composition of a product compared to the past without adequate information to consumers