PROCEDURAL ASPECTS OF CONSUMER LAW ENFORCEMENT

Following the discussions at the ECCG meeting of 23 January and taking into account the Evaluation study of national procedural laws and practices as well as the Commission Report on common principles for injunctive and compensatory collective redress mechanisms, it is suggested that the ECCG prepares an opinion for adoption by the end of this year on the following issues. The first is about making the best concerning national implementation of the revised CPC Regulation. The second and third are key issues not to be addressed in the “New Deal” package but deserving exchange of best national practices for any future initiatives/national use.

1. Improve public enforcement of consumer law
 Focus to be on enforcement of UCPD as case-study.

Practical case under present CPC Regulation: the VW Dieselgate case.
Italian and Netherlands enforcement authorities have fined the VW Group.
Have these administrative decisions been upheld on court appeal ?
Have they helped individual/collective court actions for compensation ?
Why haven’t public authorities in other Member States taken action ?

Will the revised CPC Regulation with increased enforcement powers lead to

more effective / coordinated public enforcement in such cases ?

Assess the merits of joining national Competition & Consumer Protection agencies: Overview of decisions taken under UCPD.

2. Divergent definitions of the consumer concept

Discuss distinction between average and vulnerable consumer as referred to

e.g. in UCPD and the Access to bank account directive. Is a follow-up to the existing ECCG opinion on vulnerable consumers.

Overview of Member State law/guidance on vulnerable consumer protection.

3. Court costs

The above Evaluation study considers that no action is needed as “ it is not a pressing matter ”. The above Commission Report concludes on the loser pays principle that “ its application may lead to substantial divergences in collective/individual cases.” It also provides an overview on third party funding which is “increasingly being used in several Member States”.

Is there a need for EU action on court/litigant costs/ third party funding?

In which Member States are such costs a discouragement for consumers/

associations to go to court ?

What will the proposal for a directive amending the injunctions directive propose in this respect ?

Lesson to be drawn from Regulation (EU) 2015/2421 on Small Claims Procedure, art. 16 on costs.

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