

European Consumer Summit 2013
Towards a more efficient enforcement of EU Consumer Rights

Discussion paper

I. Introduction

The main emphasis of the European Consumer Summit 2013 is on enforcement of consumer legislation. Enforcement is about giving in practice the rights European consumers have on paper.

The EU has developed over the years a solid set of consumer rules that the entry into force of the Consumer Rights Directive¹ in 2014 will further strengthen. However this impressive « consumer *acquis* » is currently not delivering as expected for consumers.

Consumer complaints data collected nationally and the market performance indicators, published in the Consumer Market Scoreboard, point year after year to a level of consumer conditions that is not satisfactory in the EU. So do the high percentages (60 to 80%) of websites offering goods or services on-line which are identified as non-compliant by the "sweeps" that the Commission coordinates since 2007².

Lack of compliance undermines the functioning of the internal market. Consumers do not trust markets and hesitate to shop across borders (e.g. of the estimated 53% of consumers that shopped online in 2012 only 15% did so cross-border) whilst rogue traders benefiting from unfair competitive advantages are difficult to catch. This compromises the competitiveness, drive for innovation and ultimately growth of European retail markets.

Ensuring that consumer legislation is effectively enforced is a key priority of EU consumer strategies and a pillar of the European Consumer Agenda presented in May 2012. It is also one of the core questions of the on-going review of the Consumer Protection Cooperation (CPC) Regulation³ that links national consumer authorities to form a pan-European enforcement network.

This paper outlines the main challenges for enforcement and possible avenues for improvement in order to launch a strategic debate at the High Level session on enforcement on 18 March 2013. The aim is to prepare for the enforcement challenges of tomorrow and to obtain political support for a concrete plan of actions.

¹ OJ L 304, 22.11.2011

² A "sweep" is an enforcement action co-ordinated by the Commission, and carried out simultaneously by national authorities to check the compliance to consumer legislation of a given on-line sector (e.g. air tickets, digital downloads) and to require that the websites are corrected where necessary. http://ec.europa.eu/consumers/enforcement/sweeps_en.htm

³ OJ L 364, 9.12.2004

II. The challenges

In its 2009 Communication on the Enforcement of the Consumer Acquis⁴, the Commission highlighted how enforcers increasingly faced new, practical challenges in their activities due to a variety of factors. The issue was also extensively discussed at a High Level event held in 2010 under the Belgian Presidency of the Council. Three years later, although some progress was achieved, the following key challenges still hinder the effective enforcement of consumer legislation throughout the internal market:

- **Consumer markets are evolving rapidly and are increasingly on-line**

Driven by new technologies and market integration, products and services as well as sales channels and marketing techniques are becoming more sophisticated and innovative business models are developing fast.

To remain effective, enforcers must be able to detect these new trends in good time and keep abreast of the changes to ensure the enforcement tools and techniques keep pace with developments. For consumers, rapid changes and increasingly complex marketing and purchasing models result in an enhanced risk of detriment both at an individual level and collectively as the internet economy enables business to easily reach millions of potential customers.

- **Enforcers have to manage a comprehensive consumer acquis cast over several legislative acts and with a variety of national procedures**

The body of EU consumer laws is laid down in various acts, mostly Directives that are transposed into national law. They are often only minimum rules. But even in areas of total harmonisation (e.g. Unfair Commercial Practices (UCP) Directive⁵) differences in interpretations increase the level of complexity.

As a result consumers cannot be certain of being equally treated throughout the internal market, whilst businesses face additional costs as they have to adjust to different regulatory frameworks. Enforcers are hampered in their efforts to work together and face additional difficulties due to the divergent national enforcement systems and procedures.

- **National enforcement capacities are under pressure and not homogenous**

Building an effective enforcement environment requires continuous attention as well as dedicated resources. Without adequate means, enforcers are not able to properly monitor consumer markets or to engage in enforcement activities where necessary. To ensure a consistently high level of consumer satisfaction throughout the EU, efforts may have to be pooled. In addition, an efficient functioning of national judicial systems is also of critical importance.

Furthermore, the ability of enforcers to be effective in their work is being critically challenged by the continuous downward pressure on public resources due to the current

⁴ COM (330) final

⁵ OJ L 149, 11.6.2005

economic situation. The external evaluation of the CPC network⁶ showed that diverging national capacities hamper the network's operations.

- **Enforcement remains primarily national whilst an increasing share of businesses operate across borders**

Data on consumer complaints shows that commercial practices increasingly target consumers in several, if not all, EEA countries as businesses embrace the full potential offered by the internal market. As markets integrate further and on-line commerce develops, this trend will only increase. The most recent Eurobarometer on internet shopping⁷ shows for the first time a sharp increase in cross border purchases.

Enforcers, however, have to tackle problems at a national level. They are often constrained by jurisdictional boundaries as well as procedural or interpretation differences which hamper their efforts to cooperate. Enforcement cooperation is further hindered by the difficulty of reconciling diverging national enforcement priorities.

III. What has been done so far to overcome these challenges?

The European Commission highlighted in the Communication on the enforcement of the consumer *acquis*⁸ five priority areas in which it would focus its activities to strengthen the enforcement of consumer legislation. This course of action was later fine-tuned in the light of the conclusions the High Level event organised under Belgian Presidency in September 2010:

- *Establishment of a EU-wide common standard of consumer legislation*

New EU consumer laws, such as the Unfair Commercial Practices (UCP) Directive⁹ in 2005, the Consumer Credit Directive¹⁰ and more recently the Consumer Rights Directive have significantly raised the level of harmonisation of the consumer *acquis*. Significant efforts are made to ensure a consistent transposition of new directives into national laws in all Member States. The scope for interpretative inconsistencies of the existing *acquis* is being reduced by issuing guidance (e.g. Guidance on the implementation/application of the UCP Directive¹¹) and through discussions with authorities in working groups and/or workshops.

It should be stressed that the European Commission has also made efforts to improve access to adequate redress in cross border cases for consumers, for example with the European Small Claims Procedure and the forthcoming legislation on Alternative Dispute Resolution and Online Dispute Resolution.

⁶ http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

⁷ http://ec.europa.eu/consumers/strategy/facts_eurobar_en.htm

⁸ COM (330) final

⁹ OJ L149, 11.6.2005

¹⁰ OJ L 133/66, 22.05.2008

¹¹ SEC (2009) 1666

- *Bridging gaps at EU level through enforcement cooperation*

Enforcement is the responsibility of national authorities that carry out their tasks within national boundaries.

In 2004, the Consumer Protection Regulation (CPC) established a framework for enforcement cooperation between national enforcement authorities to bridge the gaps that had been identified in terms of EU-wide enforcement of consumer rights. A common IT tool, information sharing and mutual investigative and enforcement assistance are the key elements of this collaborative framework. Since it came into operation in 2007 the network has handled over 1400 mutual assistance requests and circulated more than 300 alerts.

- *Strengthening the evidence base that underpins enforcement priorities and activities*

Effective enforcement also depends on the availability of accurate and comparable information on markets and consumer problems to identify the areas where enforcement action is needed.

New tools were developed for this purpose at EU level. The Consumer Markets Scoreboard, for instance, monitors 50 key consumer markets and benchmarks the consumer environment in terms of compliance, enforcement and empowerment through specific indicators. Consumer complaints are channelled through the European Consumer Centres that assist consumers when things go wrong with a trader established in another country. Since 2012, national consumer complaints are fed into a database¹² established at European level. These data sources are used to identify common enforcement priorities.

- *Increased coordination of monitoring of consumer markets*

The first internet sweep was carried out in 2007 as an enforcement response to breaches to consumer legislation at the level of the internal market. In sweeps, enforcement authorities in Member States simultaneously check selected websites for compliance with consumer requirements (in a given sector) and take enforcement actions to correct detected non-compliant behaviour. The Commission has since coordinated a sweep every year.

Efforts to carry out more and new forms of coordinated actions continue and will be framed as from 2013 within a new multi-annual plan of common enforcement priorities for the CPC network.

IV. Need for a quantum leap in enforcement of consumer laws for a consumer friendly internal market

Despite enforcers' efforts to maximise the efficiency of the means at their disposal, consumer markets show persistent shortcomings and increasing threats. To propose a strong and credible enforcement capacity for consumer protection in the internal market, new avenues must be explored.

¹² http://ec.europa.eu/consumers/complaints/index_en.htm

- *Strengthening existing enforcement capacities*

To be effective, enforcers must be credible. Consumers and businesses must perceive that there is a serious possibility of wrong-doers being detected, caught and sanctioned. This raises a number of issues:

Without adequate resources authorities cannot be effective. In the current economic context where a continuous downward pressure is being exerted on public resources an innovative outlook on enforcement is needed to achieve more with fewer resources.

A variety of options need to be envisaged. Resources could be pooled through more coordinated activities – at present the potential for coordinated investigative and enforcement actions remains underdeveloped.

The same applies to the monitoring of European consumer markets. A more systematic screening at EU level would detect in a more timely manner emerging trends and threats to consumers and could contribute towards establishing common enforcement priorities.

Establishing common priorities can further contribute towards targeting more effectively specific problem areas with existing resources. If combined with appropriately framed media activities additional leverage could be given to the outcome of enforcement actions via clear signals sent to markets.

Authorities also need to be given appropriate powers in order to stop commercial practices that are not compliant. The sanctions available to them must be proportionate but effective and dissuasive. It may also be worth reflecting on whether such powers should be expanded to allow for the compensation of harmed consumers.

A further issue that merits attention is the scope of the existing enforcement framework at EU level in terms of the legislative areas covered by specific cooperation provisions.

The fact that this framework is currently mainly geared at stopping on-going breaches to consumer laws is also likely to diminish the deterrent effect of the enforcers' actions given the speed at which websites can be created and then taken down.

- *Developing synergies with other key players in enforcement*

Other key players in enforcement include consumer organisations which are active raising consumer awareness and can warn consumers about suspect commercial practices which arise on the market. They can also contribute to enforce consumer legislation by seeking injunctions to stop infringements.

The contribution that business associations can provide for achieving a higher level of compliance should also be explored. In certain areas, self-regulation bodies could in particular play an important role. We could also consider what efforts could be made to improve the information to businesses about their legal obligations under consumer protection laws, in particular information to small enterprises.

Developing complementarities and synergies with the work done by other key players in enforcement could create new opportunities to maximise the impact of public enforcement action and contribute towards overcoming resource constraints.

As regards illegal practices for online sales, the rationale for stronger cooperation between enforcement authorities also applies to the relations with authorities outside the European Union, in particular with those in countries that have strong economic ties with the Member States.

- *Developing stronger on-line enforcement capacities*

The share of e-commerce is expanding and new sales channels and business models are constantly appearing on markets. As a consequence internet investigations need to become an intrinsic part of consumer-related inquiries.

The enforcers' toolkit and investigative techniques need to be revisited to ensure that enforcers have adequate tools and know-how to detect non-compliant behaviour and to act swiftly in response.

Options to explore include the establishment of new channels of communication to detect new trends in a timely manner and to swiftly share the relevant information. The feasibility of automating certain types of compliance checks could also be explored.

- *Explore new options to establish a credible enforcement capacity at EU level for infringements of "EU-level relevance"*

The typical "cross-border" situations that arose in the early years of the Internal Market where a trader remained established in a given country and targeted consumers in another one is progressively changing as the Internal Market makes it easier for large market players to establish retail operations in many countries.

The practices of such companies can affect consumers in several, if not all, Member States at the same time. The economic impact of possible infringements is therefore potentially significant. These infringements are currently tackled by national authorities with the legal and administrative means available to them and/or by coordinating their activities through the CPC Network.

Such cases however, reveal a "EU-level relevance" that cannot always be addressed in an efficient manner through individual national enforcement responses or, through the coordination of national enforcement responses that are undertaken simultaneously by the authorities. They call for a new, more cost-efficient approach in terms of pooling of resources and expertise.

"EU-level relevant" infringements may call for direct, centralised enforcement action at EU-level. In this respect, experience from other policy areas such as the application of the "Community dimension" in competition policy can provide useful insight. The advisability and feasibility of setting up such a centralised enforcement capacity in the specific context of consumer legislation should hence be studied, and practical options, including regarding the role of the Commission, should be explored, especially in the context of the review of the CPC Regulation.