



March 14, 2019

Joint Business Statement in view of the Trilogue discussion on the proposal on Modernisation of EU Consumer Law

In view of the upcoming trilogue discussions on the proposal to modernise consumer law, the undersigning organisations would like to reiterate our support for effective consumer protection and enforcement within the Single Market.

The evidence put forward by the European Commission in its REFIT confirmed that the current consumer rules still address well the need for consumer trust, and encourage a healthy competitive environment. We have therefore welcomed the Commission's targeted approach, focusing on key areas rather than an overhaul of the entire legal framework. However, the co-regulators' approaches substantially change the scope of the Commission's proposal, which raises concerns for businesses who will now face new and fragmented rules.

Principle of full harmonisation

We are concerned with amendments to the Commission's proposal (enforcement and individual redress) further watering down the principle of full harmonisation. This includes provisions concerning doorstep and off-premises sales, pre-contractual information, transparency obligations for online intermediaries, and the right of withdrawal applicable to service contracts. This will prompt Member States to introduce widely diverging provisions on e.g. online transparency or pre-contractual requirements which will significantly increase legal fragmentation across the EU. For consumers it will effectively take away the possibility of enjoying the same rights across Europe when buying cross-border. For businesses, the fragmentation of information rules will make it impossible to seamlessly sell products across the EU.

The need for clear and sound rules

We also have concerns about the extension of the list of unfair commercial practices, with neither the underpinning of an appropriate impact assessment, nor evidence on the scale or nature of the problem. In the case of dual quality of goods, the decision is premature, as the Joint Research Centre has yet to produce even the interim results of their study. This approach risks creating new barriers for goods which require either standard recipes/product composition (without taking due account of national preference), or requiring country-specific packaging. This will lead to new obstacles to sourcing and trading goods across the EU, not only undermining the Single Market, but reducing consumer choice and excluding local suppliers.

We also call on the co-legislators to refrain from adopting legislation that hinders the Digital Single Market, one of this legislature's main priorities, without even a comprehensive analysis and due regard to other EU rules. The proposed obligations to inform consumers about goods which have been subject to removal, or the obligation to display official classification, categorisation or quality grade, lack the necessary legal certainty, potentially overlap with product safety rules, and will ultimately confuse consumers.

Enforcement

We would like to reiterate that merely increasing the level of fines will not automatically improve enforcement. As shown in the 2017 EU Consumer Conditions Scoreboard, there is no correlation between high fines and a high level of compliance and consumer trust. In addition, it is not always clear upfront whether a commercial practice (UCPD) or a contract term (UCTD) is unfair. Beyond the blacklist, such assessments are made on a case by case basis. Therefore, imposing specific sanctions can contradict the principle of legal certainty and proportionality, according to which lawful or unlawful practices must be determined in advance.

Finally, the revised CPC Regulation already provides grounds for improving cross-border enforcement. As it is yet to come into effect, it is premature to create new rules. We support Member States' freedom to determine the modalities of imposing and enforcing penalties, whether via public or private enforcement systems.