



REFIT Fitness Check of EU consumer and marketing law and Evaluation of the Consumer Rights Directive

Results and follow-up

Peter Bischoff-Everding
Consumer & Marketing Law
DG Justice and Consumers
European Commission

REFIT Fitness Check - scope and criteria

Unfair Commercial Practices Directive



2005

Misleading and Comparative Advertising Directive



2006

Unfair Contract Terms Directive



1993

Price Indication Directive



1998

Sales and Guarantee Directive



1999

Injunctions Directive



2009

Effectiveness



Have the objectives of the legislation been achieved?

Efficiency



What were the costs and the benefits involved?

Relevance



Does EU legislation address the main problems that consumers are facing today?

EU added value



Did EU action provide clear added value?

Coherence



Is the EU consumer legislation complementing or contradicting other policy and legislation?

Evaluation of Consumer Rights Directive

- Article 30 CRD: Report on the application / evaluation
- in parallel with REFIT Fitness Check
- same evaluation criteria

Information Sources

- Online **public consultation** (May – September 2016)
 - 436 replies in total
- Dedicated **external studies**, including country analysis and stakeholder interviews
 - main Fitness Check study (UCPD, UCTD, PID, MACD, ID)
 - CSGD study (2 parts)
 - CRD evaluation study
 - Consumer market study, including consumer survey (23,500 respondents), behavioural experiments and mystery shopping
- **Consumer Summit** (17 October 2016)
 - ca. 450 participants
- Fitness Check **Stakeholder Consultation Group**
- Stakeholder **networks** (e.g. CPN, CPC, ECCG)
- **European Economic and Social Committee**

Effectiveness

- **Consumer trust and cross-border shopping**
 - Increase of **general consumer trust** in traders: from 62% to 76% (2006–2016)
 - Increase in number of **consumers shopping cross-border online**: from 6% to 19% (2006-2016)
 - Increase of **consumer trust in cross-border online trade**: from 10% to 58% (2003-2016)
 - Factors: internet access, harmonised EU consumer protection rules, ...

Effectiveness

➤ **Traders' compliance**

- Problems related to **respect of consumer rights**: stable 21% to 20% (2008-2016)
- Misleading or aggressive commercial practices: at least 'sometimes' in past year - 33% of consumers (2016 Consumer survey)

Efficiency

➤ Benefits

➤ Consumers

- 72% benefitted from legal guarantee
- 69% benefitted from unit price indication
- 45% benefitted from pro-consumer interpretation of unclear terms

➤ Businesses

- 63% of cross-border traders benefited from increased harmonisation of consumer laws
- 30% of domestic traders benefitted

Efficiency

➤ **Costs for traders**

➤ Perception by traders

- 'easy': 71% of domestic traders, 55% of cross-border traders
- 'reasonable costs': 66% of domestic traders, 48% of cross-border traders

➤ Combined effect of all EU/national rules on advertising/marketing, contract terms in 5 selected sectors

➤ Total annual costs: from EUR 2,000 (large household appliances sector) to EUR 15,000 (telecommunications services)

➤ ca. 0.024% of turnover (extrapolation)

Coherence

➤ **Sector-specific rules**

- Inter-relation of cross-cutting and sector-specific: clear and coherent legal framework
- UCPD and UCTD = "safety net" (infringements especially of UCTD in regulated sectors remain widespread)
- Problem: competence gaps or conflicts between enforcement authorities in charge of cross-cutting and sector-specific consumer legislation

Coherence

➤ **Internal consistency**

- Scope for removing overlapping information requirements – advertising vs pre-contractual stage
 - e.g. information about complaint handling and traders' geographical address in Art. 7(4) UCPD
- Need for consistent rules on legal guarantees for online and offline sales (as under CSGD)

Relevance

- **Continued need for consumer protection**
 - Consumer detriment in 6 selected markets/4 MS: between EUR 20.3 bn and EUR 58.4 bn (between 0.2%-0.7% of total private consumption)
 - Two thirds (and more) of respondents to consumer survey: consumer rights '(very) important' for purchase decision
 - Increase of intra-EU transactions
 - EU-wide infringements, especially online

EU Added value

➤ **Common harmonised rules**

- Enhanced level of consumer protection
- More legal certainty and stability in cross-border trade
- More effective / efficient cross-border enforcement
- Better awareness of EU-wide consumer rights, e.g. 2 years legal guarantee

Conclusions

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

Conclusions and follow-up

➤ Enhancing awareness

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

Conclusions and follow-up

- **Stepping up enforcement and easier redress**
 - ✓ Revised CPC Regulation
 - ✓ Alignment of **penalties** to increase deterrence
 - ✓ EU-wide right to **individual remedies** against unfair commercial practices
 - ✓ More effective injunctions procedure

Conclusions and follow-up

➤ Other targeted amendments

- Transparency of transactions via online marketplaces
 - ✓ Information about 3rd party supplier (e.g. trader or not)
 - ✓ Impact on consumer rights
 - ✓ Support for innovative character through trust
- Extension of CRD to online services provided without payment of money
 - ✓ Pre-contractual information requirements
 - ✓ Right of withdrawal
 - ✓ Consistency with future Digital Content Directive

Conclusions and follow-up

➤ Other targeted amendments

➤ Simplification and burden reduction

- ✓ Streamlining of information requirements: advertising vs pre-contractual stage
- ✓ Modernise communication means (web-based form instead of fax, e-mail)
- ✓ Review some rules re. right of withdrawal (e.g. "used goods")

Next steps

- **Impact assessment re. possible amendments**
 - Inception Impact Assessment
 - Online public consultation
 - Legislative proposal by end 2017 (CWP 2017)

- **Possible revision of the Injunctions Directive**
 - Evaluation of the 2013 Recommendation on collective redress
 - 2nd half 2018?

- **B2B relations**
 - Possible review of the MCAD
 - Broader B2B framework

Relevant Documents

- Report of the Fitness Check: SWD(2017)209
- Executive Summary: SWD(2017)208

- Report on the application of the CRD: COM(2017)259
- Evaluation of the CRD: SWD(2017)169
- Executive Summary: SWD(2017)170

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332