



The Refit follow-up: What next on EU consumer law?

Fit for shopping?
Seminar on the future of EU consumer legislation
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Czech Permanent Representation

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Main conclusions from the 2017 Fitness Check

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

Targeted Amendments

- Focus on the 5 key areas for recommended follow up based on Fitness Check + CRD evaluation:
 1. More **transparency on online marketplaces**;
 2. Extended consumer rights to contracts for "**free**" **digital services** (consumers provide data, not money);
 3. EU-wide **rights to remedies** for consumers harmed by unfair commercial practices;
 4. More proportionate, effective and dissuasive **financial penalties** for breaches of consumer law;
 5. Possibly **simplify** some rules on pre-contractual information and withdrawal right.

1. More transparency for online marketplaces

What's the problem?

- Many consumers do not know:
 - Who the parties to the contracts are;
 - If consumer rights are applicable;
 - Against whom and how they can claim their rights.
- Consumer detriment (if something goes wrong, consumers do not know which rights they have and whom to claim them from);
- Costs for traders due to lack of legal certainty.

2. Contracts for "free" digital services (FDS)

➤ What's the problem?

- Difficult to distinguish FDS from "free" digital **content**, which is covered by CRD. Leads to legal uncertainty + hinders effectiveness of the CRD.
- Problem will be magnified when Digital Content Directive arrives (includes contracts for FDS + "free" digital content).
- Absence of consumer protection (no right to pre-contractual info & no right to withdraw) = potential for consumer detriment + undermines consumer trust in e-commerce.

3. EU-wide rights to remedies under UCPD

➤ What's the problem?

- Existing national remedies not sufficiently effective to ensure that consumers harmed by unfair commercial practices can benefit of their rights.
- High incidence of UCPD breaches + lack of EU-wide remedies enabling victims to receive comparable redress vis-à-vis the same breach committed by the same trader across different countries.
- Divergent national rules = legal uncertainty + costs for traders operating cross-border.

4. More effective financial penalties

➤ What's the problem?

- **Criteria and levels of penalties vary** between MS:
Example: Max. fines for infringing UCPD:
 - PL: up to 10% of annual turnover
 - AT: max. 2900 EUR
- Traders do not have a level playing field across the EU.
- Undermines cross-border enforcement cooperation under the revised CPC Regulation.
- Hinders the effectiveness of EU consumer law by not being deterrent enough to prevent infringements.

5. Simplifying some rules and requirements

➤ What's the problem?

- Costs for traders due to UCPD and CRD requirements to **provide same information** at both advertising and pre-contractual stage:
 - info requirements on complaint handling + traders' geographical address.
- **Outdated** info requirements under the CRD:
 - Trader's fax number + e-mail address if more modern means of communication available.
- Costs for traders due to CRD **Right of Withdrawal**:
 - Traders must reimburse consumers without first being able to inspect returned goods.
 - Consumers may abuse RoW by returning products after using them more than necessary.

Inception Impact Assessment (IIA): published 30 June 2017

- IIA = detailed roadmap for the Impact Assessment.
- Feedback on IIA received by deadline 28 July: 12 replies.
- Publicly available: http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3287178/feedback_en

Feedback on IIA

- Not easy to identify common views.
- Some stakeholders advocate not amending the acquis: no room for more regulation & changes might open the door to discussions which may lower consumer protection.
- Others argue that the follow-up should be broader, e.g.:
 - Up-date the UCPD black-list;
 - Limit MS' margin of manoeuvre to add pre-contractual information requirements for on-premises contracts under the CRD.
- Some support streamlining UCPD and CRD information requirements and reducing disproportionate burdens on traders due to the CRD right of withdrawal.

On-going data gathering

- Open public consultation (**open until 8/10**);
- SME panel consultation;
- Survey for traders offering "free" digital services;
- Survey for traders operating through online marketplaces;
- Consultation with Member States through networks:
 - Consumer Protection Network (national ministries);
 - Consumer Protection Co-operation Network (national enforcers);
 - European Consumer Consultative Group (national consumer associations);
 - Consumer Market Expert Group (national market experts);
- REFIT Stakeholder Group (monthly meetings).

Possible reform of the Injunctions Directive

- The 2009 Injunctions Directive (ID) sets out a procedure to stop and prohibit EU consumer law breaches harming collective consumers' interests.
- The 2017 Fitness Check has demonstrated a clear need to make the ID more efficient and effective.
- This can be achieved by expanding the Directive's scope of application and making the injunction procedure cheaper, quicker and more effective, notably by eliminating the effects of EU consumer law breaches.
- The 2018 revision of the ID will have to take duly into account the upcoming evaluation of the 2013 Recommendation on collective redress.

Better presentation of consumer information and T&Cs

- Self-regulatory project: Runs in parallel with IA work.
- Launched in April 2017 – results expected by end 2017/early 2018.
- Led by business associations that are members of the Refit Stakeholder Group.
- Aim: have business and consumer representatives agree on "Guiding Principles for better presentation of information to consumers".
- If unsatisfactory outcome: EC will consider legislative intervention.



Consumer Law Training for European SMEs



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Be **Consumer Law Ready!**

Other 2018 actions to enhance compliance

- New Consumer Law section within the e-Justice Portal



- New Guidance on Unfair Contract Terms Directive



*Thank you
for your attention*