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SOCIAL COMMITTEE A New Deal for Consumers

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

A New Deal for Consumers

1. INTRODUCTION

1.1. Building a fair Single Market for consumers and businesses

Since 1987, the EU has had the strictest rules on consumer protection in the world, with a comprehensive set of consumer rights in place today. Consumer expenditure accounts for 56 % of EU GDP¹. A healthy consumer environment is a key factor for economic growth².

The rights the EU has put in place for consumers give predictability and confidence both to citizens and businesses, and include the right to safe products, the right to return a product bought online within 14 days and the right to have a product repaired or replaced within a guarantee period. These are just some of the tangible rights that make a difference to people's lives every day.

European consumer policy has delivered real benefits through major pieces of legislation governing passenger rights, consumer rights, unfair commercial practices and unfair contract terms. This has given both European citizens and businesses a high level of protection and certainty, but the marketplace is changing fast.

To build on this success, and to address the challenges of the new and evolving marketplace, President Juncker re-organised the Commission to give a more prominent place to consumer policy³. Since the beginning of its mandate in 2014, this Commission has delivered over 80 % of the proposals needed to address the ten priority areas set out in President Juncker's political guidelines⁴. Consumer interests have been a central theme in several Commission initiatives, such as the Digital Single Market strategy which brought about legislation to end mobile phone and data roaming charges as of 15 June 2017⁵ and ban unjustified geoblocking so that consumers can access or purchase products or services from a website based in another Member State as of 3 December 2018⁶; and ensure cross-border portability of online content services as of 1 April 2018⁷. As part of the energy union and climate policy, agreement has been reached on the Commission's proposals to reinforce consumer rights in the energy market⁸ and on a new emissions and fuel consumption test for cars⁹. Moreover, on 1 July 2018, modernised rules on package holidays will come into application¹⁰.

¹ Eurostat, GDP and main components (output, expenditure and income) [nama_10_gdp], P31_S14_S15. Household and NPISH final consumption expenditure.

² Data from the Commission's Consumer Scoreboards show a consistently positive relation between consumer conditions and the economic situation in different Member States.

³ Press release, http://europa.eu/rapid/press-release_IP-14-984_en.htm

⁴ Commission Work Programme 2018, https://ec.europa.eu/info/sites/info/files/cwp_2018_en.pdf; https://ec.europa.eu/commission/publications/president-junckers-political-guidelines_en.

⁵ <https://ec.europa.eu/digital-single-market/en/news/end-roaming-charges-travellers-european-union>.

⁶ <https://ec.europa.eu/digital-single-market/en/news/eu-negotiators-agreed-end-unjustified-geoblocking>.

⁷ <https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services>.

⁸ E.g. Communication on Delivering a New Deal for Energy Consumers, COM(2015) 339 final, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52015DC0339>; proposal for a new Energy Directive, COM(2016) 864 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0864:FIN>.

⁹ https://ec.europa.eu/growth/sectors/automotive/environment-protection/emissions_en;

https://ec.europa.eu/clima/sites/clima/files/transport/vehicles/cars/docs/faq_wltp_correlation_en.pdf.

¹⁰ https://ec.europa.eu/info/law/law-topic/consumers/travel-and-timeshare-law/package-travel-directive_en.

In addition, negotiations between the European Parliament, the Council and the Commission are ongoing on the digital contracts proposals, a central element of the Digital Single Market strategy aiming to modernise consumer contract rules for the supply of digital content¹¹ and for the sale of goods¹². Considering the importance of these proposals in order to provide consumers with clear and effective rights when accessing digital content and to ensure that both consumers and businesses can rely on uniform and effective rules across Europe, the Commission calls on the European Parliament and the Council to ensure the rapid adoption of these proposals which are highlighted in the Joint Declaration on legislative priorities agreed by the Presidents of all three institutions.

Other Commission proposals will also contribute to a high level of consumer protection. In particular, the 2008 proposal for an Equal Treatment Directive, which among other things aims at ensuring equal access to goods and services regardless of religion or belief, disability, age or sexual orientation, could have a significant impact¹³. Furthermore, the European Accessibility Act, proposed by the Commission in 2015, will make a wide range of products and services more accessible for consumers with disabilities¹⁴. The Commission calls on the European Parliament and the Council to quickly reach agreement on this important proposal and, once adopted, intends to present a proposal to include the Accessibility Act within the scope of the proposed Directive on representative actions¹⁵.

As a result of the Commission's work, conditions for consumers have improved across the EU¹⁶ and businesses have benefited from 'one-stop-shop' enforcement activities on certain issues (e.g. in-app purchases in online games, car rental, or illegal content on social media platforms¹⁷).

But consumer policy challenges remain. Recent large-scale abusive practices affecting consumers across the EU have undermined consumer trust in the Single Market. These large-scale events include 'Dieselgate' (where certain car manufacturers installed technology in cars to cheat emission tests) and widespread use by banks of unfair contract terms in mortgage contracts¹⁸. These events have also sparked a debate about whether the EU has strong enough

¹¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450431933547&uri=CELEX:52015PC0634>.

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A637%3AFIN>.

¹³ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final of 2.7.2008: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0426>.

¹⁴ Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, COM(2015) 615 final of 2.12.2015, 2015/0278(COD), <http://ec.europa.eu/social/main.jsp?catId=1202>.

¹⁵ See below at the end of section 1.2.

¹⁶ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=117250.

¹⁷ https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/coordinated-enforcement_en; http://europa.eu/rapid/press-release_IP-18-761_en.htm.

¹⁸ In this area, Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 is applicable to mortgage contracts concluded as from 21 March 2016. Amongst other aspects, it requires lenders to provide clear and detailed information on loan conditions to consumers and provides the consumers with the right to repay credit earlier than determined in a contract. For more information: <https://ec.europa.eu/info/business-economy->

mechanisms in place to handle such issues, namely to effectively enforce consumer protection rules and provide redress to harmed consumers. Moreover, the issue of the different composition or characteristics of the same products sold in different parts of the Single market has also emerged as a source of concern in several Member States.

The need to modernise some consumer protection rules and strengthen the level of compliance has been confirmed by a large-scale evaluation of rules on consumer protection finalised by the Commission in 2017 (REFIT 'Fitness Check'¹⁹, Consumer Rights Directive evaluation²⁰). The evaluation concluded that EU consumer protection rules have helped the operation of the Single market and provided a high level of consumer protection. They are fit for purpose overall but must be better applied and enforced. The evaluation also identified areas where EU consumer law could be updated and improved.

The report on the Commission Recommendation on collective redress, which was adopted in January 2018²¹, supports the findings of the 2017 evaluation. It concluded that existing individual redress mechanisms are not sufficient in 'mass harm situations' affecting large numbers of consumers in the EU.

These findings cannot be ignored. The EU must find answers to new consumer policy challenges whilst ensuring a fair Single market for both consumers and businesses.

1.2 Completing a 'New Deal for Consumers'

The package of measures presented in and with this Communication seeks to address these challenges and thus completes the delivery of the 'New Deal for Consumers' as promised by the Juncker Commission, ensuring a fair Single market for both consumers and businesses for the years to come.

Better enforcement of the rules, effective tools for redress and better consumer knowledge of their rights will enhance consumer trust and confidence. This will benefit the European economy given the importance of consumer expenditure in maintaining a sustainable economic model.

The 'New Deal for Consumers' builds on the existing consumer policy framework and takes it a step further by proposing modern rules fit for today's changing markets and business practices, stronger public and private enforcement tools and better redress opportunities.

In practice, the 'New Deal for Consumers' aims to:

- modernise existing rules and fill the gaps in the current the consumer *acquis*;

[euro/banking-and-finance/consumer-finance-and-payments/consumer-financial-services/credit/mortgage-credit_en](https://ec.europa.eu/euro/banking-and-finance/consumer-finance-and-payments/consumer-financial-services/credit/mortgage-credit_en).

¹⁹ Commission Staff Working Document - Report on the Fitness Check of EU consumer and marketing law, SWD(2017)209 of 23.5.2017, carried out in the framework of the Commission's Regulatory Fitness and Performance (REFIT) programme.

²⁰ Report from the Commission to the European Parliament and the Council on the application of Directive 2011/83/EU on consumer rights, COM(2017)259 of 23.5.2017; Commission Staff Working Document on the evaluation of the Consumer Rights Directive, SWD(2017)169 of 23.5.2017.

²¹ Report on the implementation of the 2013 Recommendation on collective redress, COM(2018)40 of 25.1.2018.

- provide better redress opportunities for consumers, support effective enforcement and greater cooperation of public authorities in a fair and safe Single market;
- increase cooperation with partner countries outside the EU;
- ensure equal treatment of consumers in the Single market and guarantee that national competent authorities are empowered to tackle any problems with 'dual quality' of consumer products;
- improve communication and capacity-building to make consumers better aware of their rights and help traders, especially small and medium-sized enterprises, to comply more easily with their obligations;
- look at future challenges for consumer policy in a fast evolving economic and technological environment.

To achieve the above goals, the 'New Deal for Consumers' proposes changes to the legislative framework complemented by a set of non-legislative actions, as set out in this Communication. The legislative package is composed of the following two instruments:

- proposal for a Directive amending Council Directive 93/13/EEC, Directive 98/6/EC, Directive 2005/29/EC and Directive 2011/83 as regards better enforcement and modernisation of EU consumer protection rules²²;
- proposal for a Directive on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC. This proposal intends to facilitate redress for consumers where many consumers are victims of the same infringement, in a so-called mass harm situation²³.

2. MODERNISING THE CONSUMER ACQUIS

The evidence collected by the Commission shows that there are consumer rules that should be modernised to respond to current challenges. The objective of the 'New Deal for Consumers' is to achieve this through the following measures:

- **New tools for consumers – individual remedies.** Consumers should have the right to individual remedies (e.g. financial compensation) when they are harmed by unfair commercial practices. Today, EU law does not provide for clear and sufficient means to eliminate the negative effects of such a practice. For example, should a new 'Dieselgate'-type scandal happen, consumers would have remedies in case of misleading advertising.
- **More transparency for consumers in online marketplaces.** Today, when consumers visit an online marketplace²⁴, they do not always know from whom they are buying (from a professional trader or another consumer). Many consumers are under the

²² COM(2018) 185.

²³ COM(2018) 184.

²⁴ An online marketplace is a type of e-commerce website where product or service information is provided by multiple third parties.

impression that they are buying from the online marketplace and are thus entering into a contract with that platform. In reality, they may most often be buying from a third-party supplier listed on the online marketplace. As a result, consumers may falsely think they are dealing with a professional trader (hence benefitting from consumer rights²⁵). This confusion can cause problems if something goes wrong with an online purchase, because it is not always easy to establish who is responsible for any faults. This diminishes the possibility of obtaining a remedy.

The proposed new rules will require online marketplaces to clearly inform consumers about the identity of the party with whom they are concluding a contract (is it a professional trader or an individual?). The Commission also proposes to clarify that all online platforms must clearly distinguish search results based on payments received from other traders from 'natural' search results, and online marketplaces should inform about the main parameters determining ranking of the offers²⁶. This will increase transparency in online marketplaces.

- **Extending protection of consumers to 'free services'.** Another gap in consumer protection occurs in 'free' digital services for which consumers provide their personal data, instead of paying with money. These 'free' services include cloud storage, social media and email accounts. Given the increasing economic value of personal data, those services cannot be regarded as simply 'free'. Consumers should therefore have the same right to pre-contractual information and to cancel the contract within a 14-day 'cooling off' period, regardless of whether they pay for the service with money or by providing personal data.
- **Removing burdens for businesses.** Evidence shows that EU consumer law has on average low compliance costs for business. However, in some areas, certain provisions have become obsolete with technological change or imply unnecessary costs for companies. The 'New Deal for Consumers' proposes to remove disproportionate burdens for businesses, for example in the areas of communication with consumers. Traders should have more flexibility in choosing the most appropriate means of communication with consumers. They should be able to use new means of online communication, such as web forms or chats, instead of email address, provided the consumer can keep track of the communication with the trader.

While the right of withdrawal is key for consumers and for trust in online commerce, the Commission also proposes to remove some burdens for traders related to the right of withdrawal from 'distance contracts' and 'off-premises contracts'. In cases where a consumer has used an ordered good instead of only trying it out in the same way as they would have done in a brick-and-mortar shop, the consumer should no longer have

²⁵ A consumer purchasing from a professional trader benefits from consumer rights, but a consumer purchasing from another private individual does not benefit from consumer rights.

²⁶ Based on the Commission guidance on the implementation/application of the Directive 2005/29/EC on unfair commercial practices, SWD(2016) 163 final of 25.5.2016 (section 5.2.6), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163>.

the right to cancel the contract. This will reduce the burden on traders related to dealing with return of used goods.

3. BETTER REDRESS FOR CONSUMERS, EFFECTIVE ENFORCEMENT AND GREATER COOPERATION OF PUBLIC AUTHORITIES IN A FAIR AND SAFE SINGLE MARKET

Rules are only effective if they allow consumers to easily gain redress in case of an infringement and if they are enforced by national authorities. This is why the 'New Deal for Consumers' includes proposals for better redress possibilities for consumers and more effective enforcement of existing consumer rules.

3.1 Better redress for consumers

The 'New Deal for Consumers' will give consumers better access to redress through:

- **Using the full potential of injunction orders to ensure redress for consumers in 'mass harm situations'.** In mass harm situations, consumers should have the possibility to claim their rights not only individually, but also through collective redress. For example, in a 'Dieselgate'-type case, remedies for victims of unfair commercial practices could be enforced collectively through a representative action.

With the 'New Deal for Consumers', the Commission proposes a modernised system of representative actions, building on the existing Injunctions Directive²⁷. This system allows non-profit making qualified entities, such as consumer organisations or independent public bodies, to defend collective consumer interests in cases of mass harm. This will help individual consumers to secure their rights. It will be especially helpful for consumers who are deterred for various reasons from individual litigation. The system will contain built-in safeguards, such as limiting the possibility to bring actions to entities which fulfil certain criteria and requiring transparency as to their sources of funding. It will thus maintain the necessary balance between access to justice and prevention of possible abuses, with a distinct approach different from the US-style litigation model.

- **Strengthening the existing tools for consumers – Alternative Dispute Resolution and Online Dispute Resolution.** Thanks to Alternative Dispute Resolution²⁸ and Online Dispute Resolution²⁹, consumers have access to simple, fast and fair procedures for solving their domestic and cross-border disputes with traders without

²⁷ Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests, OJ L 110, 1.5.2009, p. 30.

²⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

²⁹ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

going to court. The Alternative and Online Dispute Resolution framework also incentivises traders to develop effective customer care systems³⁰.

The Commission will continue to make this framework more effective, by promoting uptake by traders and establishing dialogues between the relevant actors³¹. One of the objectives will be to make sure consumers can easily find and use these tools to solve disputes.

3.2 Effective enforcement and greater cooperation of public authorities in a fair and safe Single Market

Effective enforcement is a top priority in this Commission's mandate. It took a prominent place in the Digital Single Market strategy, including with an initiative to update the enforcement of consumer rules so they are suitable for the digital age: the revision of the Consumer Protection Cooperation (CPC) Regulation³².

The CPC Regulation gives the basis for a network of national enforcement authorities to ensure the main EU consumer laws are enforced consistently across borders. The revised rules will be applicable in the Member States by 20 January 2020³³. Once the new CPC Regulation is applicable, there will be a minimum set of powers for the national authorities, a new procedure to address widespread and Union wide violations of consumer law and a better surveillance system. The Commission will have a stronger coordination role and will be able to prompt coordinated enforcement investigations in the event of Union wide infringements³⁴.

The Commission is taking the following actions to strengthen enforcement and cooperation of public authorities:

³⁰ On 11 November 2017, the Commission hosted a launch event in Berlin for 'TRAVEL-NET', a network of 15 ADR entities from 11 Member States dealing with consumer disputes in the passenger transport/travel sector. Participants at the event included representatives of key passenger transport companies. On 13 December 2017, the Commission hosted a roundtable discussion with key industry leaders in the retail clothing and footwear sector. In December 2017, the Commission furthermore launched an ADR/ODR communication campaign targeting consumers.

³¹ In the first semester of 2018, the Commission will launch an ADR/ODR communication campaign aiming to increase traders' engagement in ADR procedures and on the ODR platform. On 11 and 12 June 2018, the Commission will host the ADR Assembly 2018. The event will bring together representatives of all EU-certified ADR entities, ADR competent authorities, ODR contact points, European Consumer Centres, consumer organisations, business associations, key retailers and other ADR/ODR stakeholders.

³² https://ec.europa.eu/info/consumers/consumer-protection-cooperation-regulation/review-consumer-protection-regulation_en.

³³ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27.12.2017, p. 1.

³⁴ The new CPC Regulation also provides a framework for the co-operation between the different national enforcement authorities responsible for the sector-specific legislation that is covered by the CPC Regulation. As regards other areas of sector-specific legislation not covered by the CPC Regulation, notably the General Data Protection Regulation, the Commission promotes the co-operation between the relevant national enforcement authorities through joint workshops and possibly in the future coordinated enforcement actions.

a) More effective penalties especially for widespread infringements

Today, when a company breaks consumer rules, the penalties set out in national law vary widely across the EU and are often quite small. As a result, they do little to discourage unscrupulous traders from cheating consumers.

In the 'New Deal for Consumers' the Commission proposes that national enforcement authorities apply common criteria across the EU when deciding on financial penalties for violations of the Unfair Commercial Practices Directive³⁵, the Unfair Contract Terms Directive³⁶, the Consumer Rights Directive³⁷ and the Price Indication Directive³⁸. In cases where a trader violates these Directives in several Member States simultaneously (so-called 'widespread infringements'³⁹), authorities will have the power to impose a fine of at least 4 % of the trader's turnover. Deterrent penalties of this sort will contribute to prevent violations and restore fairness.

b) Helping Member States prepare for the new CPC Regulation

The Commission will support the Member States in 2018 and 2019 by providing assistance to national authorities and by monitoring the adaptation of national legal systems. In particular, the Commission is performing the following tasks:

- It is working with Member State experts to discuss implementation issues and provide guidance if necessary. The Commission has already compiled a list of needs of Member States, and will follow up with workshops and study visits in the Member States.
- It is developing the new IT tools needed by authorities and external stakeholders to cooperate efficiently and to exchange information and alerts. This new IT tool will enable national enforcement authorities to cooperate in detecting, investigating and stopping business practices that violate the consumer *acquis* in cross-border trading. Through the IT tool, it will be possible to send to the CPC network external alerts from parties such as consumer and trade associations.
- It is developing market intelligence to identify and swiftly address widespread infringements to consumer law of Union dimension. In the longer term, the

³⁵ Directive 2005/29 EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7 and 2002/65EC of the European Parliament and of the Council and Regulation 200/2004/EC of the European Parliament and of the Council, OJ L 149, 11.6.2005, p. 22.

³⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.93, p. 29.

³⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 199/44/EC of the European Parliament and of the Council and repealing Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64.

³⁸ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, OJ L80, 18.3.98, p. 27.

³⁹ The CPC regulation defines a 'widespread infringement' as an infringement that affects consumers in at least three Member States; 'widespread infringement with a Union dimension' are defined as practices harming consumers in two-thirds of Member States or more and amounting to two-thirds of the EU population or more.

Commission will explore ways of enhancing the monitoring of EU level retail-market practices that harm consumers and fair competition. This could include ways to facilitate the collection of on-line evidence and help national authorities to develop methodologies for detection, identification and sharing of evidence, and launch coordinated actions to remedy the harmful practices.

c) Capacity-building

The Commission will continue to engage in capacity-building activities for national authorities. This will focus on the increasing 'digitalisation' of consumer markets. This capacity-building will encompass the following main activities:

- Funding and coordinating work for the 'E-enforcement Academy'. This project mobilises EUR 1.75 million for the capacity-building of the national consumer protection authorities and the national consumer-product safety authorities.
- Providing support for the Member States to ensure that reliable evidence is gathered on possible infringements of EU legislation. This will help the Member States to identify more quickly widespread problems that consumers face in the EU.

d) Coordinated enforcement

The Commission will continue to work with the national CPC authorities on strategic and targeted enforcement to promote fairness in the Digital Single Market⁴⁰. This takes the form of coordinated screening of websites ('sweeps')⁴¹, or coordinated action to solve issues affecting a large number of consumers in the EU⁴². The Commission's experience with enforcement since 2014 shows it is possible to achieve positive results for consumers and businesses alike (for example 'one-stop-shop' solutions for EU-wide infringements of EU legislation).

An important focus will remain on tackling unfair practices (e.g. against misleading and unfounded environmental claims) and illegal content online⁴³.

3.3 Implementing non-food product-safety legislation

The Commission will also help Member States to cooperate better on product safety⁴⁴. It is vital to ensure that consumer health and safety is protected from dangerous products, whether they are purchased online or offline. This will be achieved by the following measures:

⁴⁰ See the Commission Communication on the Mid-Term Review on the implementation of the Digital Single Market Strategy - *A Connected Digital Single Market for All* - COM(2017) 228 final of 10.5.2017, p. 5-6.

⁴¹ https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/eu-wide-screening-websites-sweeps_en.

⁴² https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/coordinated-enforcement_en.

⁴³ Communication on Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms, COM(2017) 555 final of 28.9.2017; Commission Recommendation on measures to effectively tackle illegal content online, C(2018)1177 of 1.3.2018.

⁴⁴ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15.1.2002, p. 4.

a) Modernising the Rapid Alert System

The European Rapid Alert System is operated by the Commission. It ensures that information about dangerous non-food products withdrawn from the market, and/or recalled from consumers anywhere in Europe, is quickly circulated between Member States and the Commission.

To enable market surveillance authorities to be more effective, the Commission will, among others, revise the guidelines for the Rapid Alert System in order to maximise its benefits for consumers.

b) Making the most of coordinated market surveillance

To improve the functioning of the Single market for consumers, the Commission has been funding coordinated market-surveillance activities on product safety. This has resulted in more than 25 coordinated market-surveillance actions in a variety of product sectors (e.g. toys, childcare products). The Commission will continue to support EU authorities' joint actions to facilitate knowledge-sharing and reinforce the network of market surveillance authorities also in the light of the Commission proposal for a Regulation on enforcement and compliance of Union harmonisation legislation on products⁴⁵. This support will help in tracking and removing dangerous products across the EU.

The before-mentioned Commission proposal for a Regulation on enforcement and compliance of Union harmonisation legislation on products aims to strengthen the framework for market surveillance on products both within the Single market and at the external borders, including structural market surveillance cooperation exchanges with international partners.

4. INTERNATIONAL COOPERATION

a) Cooperation agreements to step up coordination with partners outside the EU

The bodies that enforce consumer legislation are faced with very similar (if not identical) business practices and marketing strategies around the world. Tackling these issues in a coordinated manner can only lead to better compliance by businesses.

The Commission intends to work on bilateral or multilateral agreements for consumer-protection enforcement cooperation between the EU and key jurisdictions like the US, Canada and in the future China.

This international cooperation will be facilitated by the stronger framework for the coordination of public enforcement authorities within the EU established by the revised CPC Regulation, which can be used as a basis for seeking cooperation agreements with third countries. Such agreements could establish: mechanisms for mutual assistance between authorities; cooperation tools adapted to the digital economy to tackle websites perpetrating worldwide frauds; a new 'one-stop-shop' procedure to address large scale infringements to consumer rights committed by businesses at global level; and a more effective surveillance system.

⁴⁵ COM(2017) 795 final of 19.12.2017.

b) Product safety: a global challenge

Product supply chains are global, and consumers can easily purchase products online directly from countries outside the EU. This makes international cooperation critical for keeping consumers safe in the EU. Cooperation on product safety is needed with both producer countries and countries with similar products on their market, so that market surveillance by EU Member States can have maximum impact.

The Commission will further improve cooperation with China⁴⁶ and will raise awareness among manufacturers about EU product safety requirements. The Commission will also support international initiatives to improve globally the safety of products sold online.

Finally, the Commission will continue to promote effective consumer protection in future bilateral and multilateral trade negotiations. It will do this by including specific product-safety cooperation rules in trade deals. They will enable information exchange on dangerous products where appropriate, including with producer countries.

5. ENSURING EQUAL TREATMENT OF CONSUMERS IN THE SINGLE MARKET: TACKLING THE PROBLEM OF 'DUAL QUALITY' OF CONSUMER GOODS

In the 2017 State of the Union speech, President Juncker said: *"I cannot accept that in some parts of Europe, [...] people are sold food of lower quality than in other countries, despite the packaging and branding being identical. [...] we must now equip national authorities with stronger powers to cut out these illegal practices wherever they exist."*

To tackle this issue, the Commission has already taken several important steps.

In September 2017⁴⁷, the Commission adopted a set of **guidelines on the application of EU food and consumer laws** to tackle the issue of 'dual quality' products. The guidelines aim to help national authorities determine whether a company is breaking EU law when they market under an identical brand products of different compositions in different countries.

In **discussions with industry representatives**, the Commission has called on companies to stop unjustified and misleading product differentiation practices, which do not correspond to specific market requirements. Some producers have already started to adapt the composition of their products to ensure the same products are sold across the EU, and further changes are expected in their differentiation and consumer-information strategies.

The Commission has offered **funding to support enforcement** by EU Member States and to develop a **common approach to the comparative testing of food products**. The Commission's Joint Research Centre, with the support of 16 Member States and stakeholders, is developing this methodology and will launch a testing campaign in May 2018. The tests will cover a common basket of products which are marketed in most Member States and will

⁴⁶ In 2017, over half of the dangerous products notified in the EU Rapid Alert System for non-food dangerous products were of Chinese origin, see annual report, https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/reports/index_en.htm.

⁴⁷ Commission Notice C(2017)6532 of 26.9.2017 on the application of EU food and consumer protection law to issues of dual quality of products – the specific case of food.

include chemical and sensory testing. The first results are expected by the end of 2018. If necessary the Commission, together with Member States' authorities, will address the issues arising in the first test results on the common basket of products.

In parallel to this ongoing work, the Commission estimates that several of the measures proposed in the 'New Deal for Consumers', notably stricter penalties for illegal practices, individual remedies for misled consumers and collective redress mechanisms, will make it more difficult and costly for traders to mislead consumers by marketing 'dual quality' goods.

Business operators are free to market and sell goods with different composition or characteristics, tailoring their products to local consumer preferences or taking into account the need to respond to different trends in demand, logistical issues and emerging technologies, provided that they fully respect Union legislation (whether on the safety of products, labelling or other horizontal or sectoral legislation). Products under the same brand may exceptionally have different characteristics. However, a substantially different composition in identically branded goods can be a source of concern when those products are marketed in a way that has the potential to mislead the consumer.

To leave no room for doubt that EU law prohibits unjustified and misleading product differentiation in the Single market, the Commission intends to equip national authorities with clearer rules to guarantee that they can combat more easily unfair practices. The Commission therefore proposes to make it explicit in the Unfair Commercial Practices Directive that marketing of products as being identical to the same product marketed in several other Member States, while those products have significantly different composition or characteristics, is a misleading action within the meaning of Article 6 of that Directive.

6. AWARENESS-RAISING AND CAPACITY-BUILDING

The Commission's evaluation of consumer-protection rules in 2017 ('Fitness Check') found that a low level of compliance with EU consumer law is compounded by a limited awareness by consumers and traders of their rights and obligations, with awareness varying widely between EU Member States. Problems reported by consumers stood at 20% in 2016, the same rate as in 2008, with little or no improvement in a decade. At the same time, only 41% of EU citizens, for example, knew they had a right under EU law to free repair or replacement of a defective good.

Throughout 2018 and beyond, the Commission will take the steps set out below to improve knowledge about consumer rights and to stimulate a new culture of compliance with EU consumer law.

6.1 Consumer dialogues and communication campaign

In November 2017, the Commission launched a broad discussion as part of the 'New Deal for Consumers' with the aim of bringing together stakeholders working on improving consumer

rights in the EU to discuss how "to reshape EU consumer rules to make them fit for the 21st century"⁴⁸.

As part of this initiative, the Commission will organise throughout 2018 a series of 'consumer dialogues' in the Member States using a country-by-country approach. The goal of the dialogues is to explain to people what the EU is doing for them as consumers and to listen to their views on how the EU can better tackle their concerns.

In 2018, the Commission will also roll out a comprehensive communication campaign to make Europeans more aware of their current consumer rights in the EU. The campaign will focus in particular, but not exclusively, on those Member States where citizens have shown to have the lowest knowledge of consumer rights.

6.2 Training, education, capacity-building and other information tools

- In March 2018, the *ConsumerLawReady* project went online⁴⁹. This project aims to train small and medium-sized enterprises (SMEs) in EU consumer law to help them comply more easily with their legal requirements. The project is being implemented by a consortium of consumer and business organisations. These organisations train 'lead trainers', who in turn train 'local trainers' in all Member States. These local trainers will in turn offer training to SMEs. This multiplier effect will ensure wide dissemination.
- In the third quarter of 2018, the new *Consumer Law Database* will be available as part of the e-Justice Portal⁵⁰. It gives everyone, especially legal practitioners and enforcement authorities, access to national rules transposing the key EU consumer directives. It will also give access to relevant case-law from Member States and the European Court of Justice, as well as to relevant national administrative practice.
- The European Commission is facilitating a *self-regulatory initiative* by European business on key principles for better presentation of information to consumers, including standard terms and conditions. The results of this initiative are expected in summer 2018.
- The Commission will develop, by early 2019, *guidance on Directive 93/13/EEC on unfair contract terms in consumer contracts* which protects European consumers against unfair standard contract terms used by traders. The REFIT Fitness Check found that the principle-based approach of the Unfair Contract Terms Directive is still effective and contributes to a high level of consumer protection. Based on numerous rulings of the European Court of Justice, the guidance will aim to clarify questions which have arisen in the application of the Directive, for example regarding the legal consequences of the non-binding nature of unfair contract terms and the obligation of

⁴⁸ http://europa.eu/rapid/press-release_MEX-17-5047_en.htm.

⁴⁹ www.ConsumerLawReady.eu. *ConsumerLawReady* is a pilot project organised by the European Commission at the request of the European Parliament.

⁵⁰ <https://e-justice.europa.eu/home.do>.

national courts to assess, of their own motion, whether a contractual term falling within the scope of Directive 93/13/EEC is unfair.

- The Commission has committed to continue its efforts in consumer education, as only knowledgeable consumers can use their rights effectively. The scope of current successful consumer education projects such as the *Consumer Classroom* could be widened by influencing the behaviour of other target groups, with a particular focus on vulnerable consumers.
- The Commission will continue its efforts to *build the capacity of consumer organisations* in a more diversified manner. For example, it will seek to strengthen the role of consumer organisations as watchdogs and important pillars of civil society in countries where they are still relatively weak. Their competence and voice in policymaking at national level should also be strengthened.

7. PREPARING CONSUMER POLICY FOR FUTURE CHALLENGES

Whilst the 'New Deal for Consumers' package will address the most important challenges to consumer protection in today's EU, markets will of course continue to evolve and change quickly and consumer protection law must be able to continue to adapt and evolve to remain relevant and capable to addressing new areas of challenges for consumers. This can be new complex and non-transparent transactions. The Commission will continue to monitor consumer markets to identify emerging issues and to develop behavioural insights to inform its policymaking.

The Commission is currently exploring the following areas:

- **Artificial intelligence.** Artificial intelligence technologies bring major opportunities for consumers. At the same time, they can raise challenges related to (i) the complexity and the potential lack of transparency of these technologies, (ii) users' lack of control over the data they generate, or (iii) questions related to discrimination, bias, safety and liability for damages. The Commission will carry out further research to identify the best ways to make these technologies more transparent⁵¹. The Commission will also support both national and EU-level consumer organisations in building understanding and foster transparency of artificial intelligence-powered applications so as to build consumer trust.
- **Internet of things.** It is forecast that there will be at least 6 billion internet-connected products in the EU and 25 billion worldwide by 2020⁵². It is important to make sure that these products and technologies are safe for consumers, while ensuring wide choice and not stifling innovation. The Commission will assess whether the current legal framework for product safety is fit for purpose in the light of the new challenges brought about by these new technologies, or whether there are any gaps to be addressed. In this sense, the Commission will further explore links between

⁵¹ The Commission plans to adopt a Communication on artificial intelligence on 25 April 2018.

⁵² Gartner report (2013) "Predicts 2015: The Internet of Things." Newsroom available at: <http://www.gartner.com/newsroom/id/2970017>, STAMFORD, Conn., December 12, 2013.

cybersecurity⁵³ and product safety, identifying tools that can improve product security and safety by design. The Commission has also set up an expert group that will assess whether and to what extent existing liability schemes are adapted to the emerging market realities following the development of new technologies in the wide sense, including artificial intelligence, advanced robotics, the Internet of things and cybersecurity issues.

- **Mobile e-commerce.** The growing importance of mobile e-commerce can make consumers vulnerable in different ways, for example because of the way the required information is presented to them. The Commission is launching a behavioural study that will focus on the impact on consumers of marketing and disclosure practices used online. The study will focus on retail financial services, in particular how they are marketed and sold through mobile devices.
- **Sustainable consumption.** Rising consumption worldwide puts increased pressures on the environment. This makes it crucial to make sustainable products and services available to consumers and to encourage more sustainable consumption by them. Consumers are increasingly interested in sustainable products; they need to be empowered to make informed purchasing choices and have easy access to products that are environmentally friendly. Additional awareness-raising efforts are needed to make consumers better aware of the different EU labelling instruments⁵⁴, such as the EU Ecolabel, and to ensure that they are well-understood.

The 'New Deal for Consumers' will benefit the environment, given that stronger enforcement and better opportunities for individual redress against unfair practices can deter false environmental claims or planned obsolescence practices, complementing the actions of the EU Circular Economy Action Plan⁵⁵. For example, this includes research on premature obsolescence⁵⁶ and the Environmental Footprint pilots⁵⁷ which aim to limit false claims by providing a harmonised method to calculate and verify the environmental information provided.

8. CONCLUSION

The 'New Deal for Consumers' is a priority for the Juncker Commission. Much has already been achieved in the last few years to improve consumer rights and certainty for business in areas such as cross-border portability of content, roaming charges and geoblocking, as well as in the energy sector. This now needs to be fully implemented and complemented with

⁵³ See also the Cybersecurity package adopted by the Commission in September 2017, https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-477_en.

⁵⁴ For example, the EU Ecolabel (on non-food products and services), EU organic label (on food products), EU Energy label (on household appliances), EU Car Labelling Directive (CO₂ and fuel consumption for new cars), EU Tyre Labelling Regulation (wet grip, noise and rolling resistance of tyres), date labels on food products to prevent food waste, Ecodesign information requirements etc.

⁵⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>.

⁵⁶ Such as <http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/h2020/topics/ce-sc5-02-2018.html>.

⁵⁷ http://ec.europa.eu/environment/eussd/smgp/ef_pilots.htm.

modernised consumer protection rules fit for the challenges of today's fast evolving markets, effective private and public enforcement and better redress opportunities. This is the objective of the present Communication and the proposals accompanying it. They will deliver tangible changes in the interests of consumers and the economy which relies on consumer confidence

Overall, the proposals and initiatives announced in this Communication regarding the 'New Deal for Consumers' will bring clear benefits for European consumers seeking choice and fairness as well as for European businesses looking for certainty and trust across the whole Single Market.

The Commission calls the European Parliament and Member States in the Council upon Member States and the European Parliament to work together over the next year to agree the proposed legislative changes onto the statute book before the European Parliament elections in May 2019. A broader commitment is needed to engage all stakeholders in a public debate on how best to tackle consumer concerns, looking also to the future challenges. Over the next year, the Commission will work with Member States and all stakeholders to stimulate these public debates.

With the 'New Deal for Consumers', European consumers and businesses alike will be guaranteed the certainty and protection they need. The 'New Deal for Consumers' is about empowering consumers, promoting fairness and building trust within the Single Market. It will ensure that there are no second class consumers in the European Union and that European businesses operate in a regulatory framework fit for today's challenges and offering a level playing field across the Single market.