



European Economic and Social Committee

INT/732

**Consumer vulnerability in
business practices**

Brussels, 15 October 2014

OPINION

of the

European Economic and Social Committee

on

Consumer vulnerability in business practices in the single market
(own-initiative opinion)

Rapporteur: **Bernardo Hernández Bataller**

On 22 January 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

Consumer vulnerability in business practices in the single market
(own-initiative opinion).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 September 2014.

At its 502nd plenary session, held on 15 and 16 October 2014 (meeting of 15 October), the European Economic and Social Committee adopted the following opinion by 92 votes to 37 with five abstentions.

*

* * *

1. **Conclusions and recommendations**

- 1.1 The gradual erosion of the purchasing power of the middle classes - the real drivers of consumer society - and of all consumers in general, and the financial difficulties threatening the very survival of small and medium-sized enterprises, given the tight profit margins in the current business climate, have made it necessary to review standard commercial market practices.
- 1.2 The knock-on effects of the market distortions caused by unfair practices have led to the emergence of consumers trapped by the financial situation they find themselves in unexpectedly, characterised by a loss of freedom of choice and difficulties in asserting their rights in this area. These consumers should also be shielded from the effects of these policies, to prevent them falling victim to exclusion.
- 1.3 Moreover, the economic crisis has led to a widespread and ongoing trend for the gradual weakening of potential consumers, which suggests that this fall in consumption could continue to grow. To date, the public authorities have not proposed systemic measures to prevent it or to save consumers from such deterioration.
- 1.4 Correcting these imbalances would also improve the position of producers and small and medium-sized enterprises, insofar as transparency and free competition relieve the pressures they face (falling demand, predatory pricing, etc.) and which contribute to the defective functioning of the internal market.

1.5 Measures should be adopted in the areas of prevention, protection, mitigation and recovery, including, without prejudice to the proposals contained in the present opinion, as a minimum:

A. Measures by the European institutions aimed at:

- 1) ensuring more effective implementation of the single market rules, especially those concerning product safety and market surveillance, the Directive on unfair commercial practices and the Regulation on cooperation between the Commission and consumer authorities;
- 2) supporting, supplementing and supervising Member State policies in the area of consumer protection;
- 3) monitoring the new barriers that have emerged, hampering the functioning of the internal market, such as consumers falling victim to economic violence when concluding contracts and other issues, taking the appropriate steps to dismantle such barriers properly.

B. The Member States should:

- 1) provide consumer associations with adequate financial support, enabling them to carry out their duty to protect the rights of all consumers. The possibility of creating a fund using the amount of the penalties imposed in consumer issues for the development and implementation of policies for consumer protection, and in particular the implementation of measures of general interest of benefit to all consumers, should be examined on the basis of the experience of Member States where such funds already exist, with a view to then setting one up and operating it, in accordance with the legislation of each Member State;
- 2) adopt measures within their social protection systems to prevent the social exclusion of consumers and of all citizens, above the 30% mentioned in the Multidimensional Poverty Index, especially as regards access to and supply of basic essential services. Each Member State would, in accordance with its requirements, contribute to this end by preparing and implementing a "citizens' rescue plan" which would help to relaunch household economies and consumer purchasing power.

1.6 Further work should be done on mainstreaming consumer interests into all EU policies. The relevant EU programmes should consequently allocate a specific budget to support the contribution of consumer organisations, by means of activities of general interest, in order to promote the inclusion of consumers who unexpectedly find themselves in a financially weakened situation.

2. **Introduction**

- 2.1 The longevity and depth of the current economic and financial crisis, together with the measures adopted by many EU Member State governments, have had spill-over effects on the supply of and demand for goods and services, reflecting the loss of purchasing power that most consumers have had to endure and which is resulting in social fragmentation.
- 2.2 Wage cuts have obliged people to change their consumer habits, so that they are able to adjust their household budget to their new spending capacity.
- 2.3 The loss of their sources of income - despite being able in some cases to rely on the care work provided by family networks - and the continuing fall in value of this income, have swelled the ranks of financially weakened consumers at risk of social exclusion, especially where certain products, supplies and services are concerned, in what could be considered to be a transitional weakness.
- 2.4 Furthermore, the descent of entire segments of consumers into layers with lower purchasing power, together with financial exclusion and unemployment, have resulted in new restrictions on access to conventional goods and services markets, stimulating the emergence of alternative trading fora and channels, which can sometimes distort the market.
- 2.5 The use for statistical purposes of the Multidimensional Poverty Index (MPI)¹ is important in evaluating and taking decisions to prevent social exclusion. The MPI looks at a range of basic aspects (such as education, health and standard of living according across ten indicators (quality of life/well-being), considering a person to be poor if they lack access to at least 30% of the weighted indicators. For this reason, it is important for the Member States to adopt measures to rise above this threshold.
- 2.6 Similarly, the weak financial position of consumers whose finances have suffered as a result of the crisis denies them some of the means they need to access virtual marketing environments, which in turn makes it harder for them to access the market in goods and services on more favourable terms. The "digital divide" is thus widening the "social divide", because consumers are finding it harder to protect themselves against the risks arising from the effects of the economic crisis and the complexity of digital markets.
- 2.7 Consumers who have become vulnerable due to unexpected economic developments also lack sufficient information on and protection of their financial interests in transactions carried out in market areas to which they are increasingly drawn.

¹

A statistical parameter developed by the United Nations and the University of Oxford in 2010 to measure the type and intensity of poverty.

- 2.8 Lastly, the cuts in public resources made available to consumers under the adjustment policies that governments have put in place in recent years seriously undermine the effectiveness of market surveillance activities in particular. The EU has also allocated less funding to the Multiannual Consumer Programme for 2014-2020², as the EESC has already pointed out³.
3. **Business practices likely to undermine the protection of consumers unexpectedly as a result of the economic crisis**
- 3.1 The varying features and the effects that different unfair business practices have on the market for the consumers most weakened unexpectedly due to the economic crisis damage the ability of such consumers to meet their most basic needs to a satisfactory standard.
- 3.2 Compliance with the standards that safeguard the health and safety of consumers and users should not be open to negotiation by suppliers; the former need to be kept safe from any risk of that happening, and, by application of the precautionary principle, (as set out in the Communication from the Commission of 2 February 2000), the marketing of any products, goods or services that jeopardise their physical or mental well-being, or undermine their legitimate economic interests must be prevented, without prejudice to the general safety obligation applying to any consumer product intended for consumers or that could be used by consumers, including those used by consumers in the provision of a service.
- 3.3 Not only can essential food needs not be properly met when consumers are in situations of economic vulnerability but they also risk being seriously affected by a range of foodstuffs whose nutritional value is watered down to reflect the lower price.
- 3.4 The same holds true when it comes to assessing conditions for the storage and sale of products which, as perishables, bear a date mark for consumption.
- 3.5 There might even be business practices which, in order to drastically reduce prices, encourage the sale of products that do not meet the requirements to be placed on the market, with the same applying to the provision of services. Consequently, all necessary measures should be adopted in order to prevent, where appropriate, the sale of such products, with the Member States adopting an active and vigilant approach. As pointed out by the EESC⁴, cooperation between the competent national bodies and the Commission should be stepped up by approving the revision of product safety rules, which should come into force immediately.
- 3.6 In this regard, we should also consider the deliberate use of terms and descriptions that mislead consumers about a product's characteristics in commercial promotions and discounts. The same also applies to misleading advertising, both in terms of marketing campaigns

² [OJ L 84, 20.3.2014, p. 42.](#)

³ [OJ C 181, 21.6.2012, p. 89.](#)

⁴ [OJ C 271, 19.9.2013, p. 86.](#)

supposedly having an ethical purpose, encouraging people to make purchases on the basis of an emotional draw by suggesting they would be helping others, and in terms of misleading statements about the environment, the accuracy of which is hard to prove.

- 3.7 Monitoring should also be carried out on the marketing of generic or "own brand" products, which do not comply with the marketing requirements and standards in force.
- 3.8 Also in the food sector, a particularly worrying aspect is the proliferation of alternative marketing channels which escape administrative supervision, such as "food counterfeiting"⁵ using counterfeit basic products, the illegal sale of food and the recirculation of discarded food for human consumption, etc. The same applies to the sale of medicines without prescription, which are not "over the counter" products⁶, and are manufactured without guarantees, fraudulently imitating original authorised medicines and posing serious health risks.
- 3.9 Other products have planned obsolescence built in from the design stage, shortening their lifetimes and meaning that new products must be bought to replace them, counter to the criteria of sustainability and efficient consumer spending, as set out in a previous EESC opinion⁷.
- 3.10 Generally speaking, the supply of goods through non-conventional marketing, including digital marketing, makes it hard for economically vulnerable consumers to be certain when it comes to differences, and often seeks to create demand among this group, using lures based on price, ease of payment, false discounts (sometimes by means of "dynamic pricing"⁸, which should be specifically prohibited), coupons or vouchers that frequently involve a clear inducement to purchase, taking advantage of the unequal position of the parties involved in the commercial transaction. Often, on internet price comparison websites, the identity of the trader managing the site is not made clear, nor is it always clear whether traders are paying to have their products or services listed.
- 3.11 It should be borne in mind, however, that fully harnessing the potential of the new technologies also provides opportunities for financially weak consumers, by extending the range of products available and promoting business competition, which in turn brings down those distribution costs that are not inherent to the product in question.
- 3.12 In general, any commercial practice that involves weakening the safeguards to which the consumer is entitled in return for a reduction in the price of the product or service supplied

⁵ Investigated by Interpol's trafficking in illicit goods unit (Operation Opson).

⁶ *Over the counter* refers to medicines sold freely, not requiring a prescription.

⁷ [OJ C 67, 6.3.2014, p. 23.](#)

⁸ A marketing tool using a flexible price-setting system according to supply and demand at a given moment, misleading the consumer into thinking it is a discount.

diminishes their rights and economic interests. The effect of all this is to make them more vulnerable, which fosters the development of negative feedback cycles, which can lead economically weak consumers into further difficulties.

- 3.13 Concerning another aspect that has a particular impact on the health of financially vulnerable consumers, it is worth highlighting the growing impact of energy poverty in regions where climatic features play a key role. It would therefore also be appropriate to address the circumstances surrounding "winter truces" or any other that could be taken into account by the relevant operators in situations deemed risky as the result of customers having their supply cut off because they are struggling to pay, due, in particular, to unexpected economic circumstances.
- 3.14 In general, it would also be worth adding the harmful practices some companies employ, often causing irreversible damage to weakened household budgets, especially practices relating to deposit and savings institutions and financial products that fail to provide accurate information and adequate contractual safeguards - such as consumer credit that comes with very high annual interest rates - which have plunged many consumers into a "crisis within a crisis", in other words, destroying their future expectations, which has resulted in situations of household over-indebtedness and even total insolvency.
- 3.15 The circumstances outlined above can be extended to cover more specific issues, such as the mortgage crisis, "underinsurance", etc., which cause a cumulative and ongoing weakness that is hard to deal with for consumers who are forced into such a situation. Particular mention should be made of excessive charging of commissions, often linked to a lack of banking transparency, which can even culminate in cheating not only small savers, but also private investors, in connection with equity transactions into which they have been led by the financial bodies themselves or by other bodies that are in the sector but are not authorised to operate.
- 3.16 With regard to cross-border trade, the uneven transposition of Directive 2005/29/EC on unfair commercial practices⁹ risks diluting its intended purpose and not ensuring greater legal certainty for undertakings. Better transposition would help improve consumer protection. Consequently, the Commission will now have to ensure that it is correctly implemented in all Member States, which would be helped by the swift approval of "guidelines" making the directive easier to interpret in line with its actual purpose.
- 3.17 With regard to unfair business practices, it is crucial for the Commission to supervise the aspect concerning whatever necessary measures the Member States may take for failure to comply with the provisions of the directive. As a general rule, the penalty which should be imposed should never be lower in value than the profit made through a practice deemed to be

⁹

[OJ L 149, 11.6.2005, p. 22.](#)

unfair or misleading. Procedures, including court proceedings, must also be adequate and effective in order to ensure compliance with the purpose of the directive.

- 3.18 In future, in order to ensure greater consistency with EU law, there should be coordinated and simultaneous revision of the unfair commercial practices directive and the directive on misleading and comparative advertising, as previously pointed out by the EESC¹⁰.
- 3.19 Ultimately the aim is to prevent the transformation of a single market into a dual-format market whose less pleasant face would be visible to those who have the least and need the most. Business practices should be more scrupulous when targeting the financially weakest consumers. Account must be taken of consumers' need to access essential products, services and supplies in sufficient quantity and on an ongoing basis, enabling them to lead a decent life - something which should be protected by the appropriate public authorities.

4. Proposals for institutional action to combat the unexpected financial vulnerability of consumers

- 4.1 The EESC calls on the competent authorities to adopt effective measures to ensure secure access to essential products and services, and the express protection of the rights of those consumers and users who, due to unexpected economic developments, have been hardest hit by the economic and financial crisis. The aim, as the EESC has already stated, is to prevent their descent into social exclusion, through measures such as the regulation of family over-indebtedness¹¹, which seeks to mitigate the high-intensity financial pressure suffered by particular segments of the population.
- 4.2 Furthermore, specifically protecting the rights of consumers who have unexpectedly become financially vulnerable, particularly their right to access the market for essential goods and services under decent conditions, should form a key challenge for European public consumer protection policies in terms of implementing the appropriate legislation.
- 4.3 The various measures can be categorised under four headings: prevention, protection, mitigation and recovery.
- 4.4 Any action plan must, at the least, set out action falling under these different categories of intervention measures.
- 4.5 Firstly, a fund should be created with the proceeds from the financial penalties imposed on those who breach consumer rules, and these sums should be used for consumer protection policy purposes, in particular for measures of general interest, by means of the instrument of collective action, of benefit to the entire population, carried out by consumer associations and

¹⁰ [OJ C 271, 19.9.2013, p. 61](#).

¹¹ [OJ C 311, 12.9.2014, p. 38](#).

public authorities and other bodies able to take action to enforce this policy, in keeping with the provisions of each Member State.

- 4.6 In cases of serious infringements entailing risks or real harm to human health or safety, the power of the competent authorities to impose penalties should be strengthened, including the power to designate, seize and/or confiscate instruments or goods used, and to shut down company activities, while fully adhering to the rule of law.
- 4.7 Prevention measures would affect the various external factors contributing to the increase in consumers who unexpectedly become financially vulnerable as a result of the economic crisis and to the emergence of situations and practices that may affect those consumers in a differentiated manner.
- 4.8 To complement the external factors, steps should be taken to strengthen consumer representatives, including the economic and social partners, and encourage them to sign up, among other things, to cooperative, joint purchasing or collaborative economy projects.
- 4.9 Similarly, a basic preventive measure would be set to set up an observatory to monitor strategic policies adopted in critical sectors such as services of general interest, audiovisual services, fuels, banking, energy oligopolies, housing, etc., which may represent a risk to which weaker consumers are more vulnerable.
- 4.10 In short, these are actions related to economic, financial and employment scenarios and others arising from the adverse impact that the new technologies may have on market access for goods and services, with a view to protecting consumers' and users' rights. Advertising and marketing activities should therefore be included, as they can result in decisions that do not fit the situation or, in other words, distort decision-making criteria.
- 4.11 Protection measures would reinforce mechanisms to protect consumers and users in situations where they are in a weaker or subordinate position, especially in terms of technical and legal protection and of compensation and reparation for damages, taking into account the particular situation of consumers who have unexpectedly been financially weakened.
- 4.12 There is a need for closer cooperation between the national authorities and the Commission and for an in-depth revision of the scope of Regulation 2006/2004 on cooperation in the field of consumer protection, introducing equivalent verification mechanisms, harmonising penalties and boosting the Regulation's effectiveness and operational mechanisms. Moreover, consumers are entitled to have goods and services that are safe, which requires effective market supervision. The EESC therefore hopes that the revision of legislation on product safety is adopted.

- 4.13 Mitigation measures target consumers whose financial situation has already become vulnerable due to the economic crisis, and aim to help them to deal with these consequences, enabling them to meet their basic needs in the future to ensure a decent quality of life.
- 4.14 With regard to both this type of measure and to the recovery measures that Member States might adopt, it is important that some of them consider the assistance provided by family and social support networks which, in turn, should have the necessary institutional support to carry out these tasks. The Structural Funds too could help with setting up these support funds, in order to prevent social exclusion, by fulfilling their purpose.
- 4.15 Recovery measures include those promoting alternative means of escaping the situation of economic weakness in the light of what is currently feasible. In this respect, it is suggested that a "citizens' rescue plan" be prepared and implemented, helping to relaunch the household economy by restoring consumer purchasing power and offsetting the losses and cuts suffered during the economic crisis, as a just counterpart to the bank bailouts from which financial institutions have benefited. This would more accurately reflect the provisions of Point 5 of the UN's 1999 Guidelines for Consumer Protection, which stipulates that "Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries."
- 4.16 Furthermore, there is also Article 34(3) of the European Charter of Fundamental Rights which, in order to combat social exclusion and poverty, empowers the Union and the Member States to put in place arrangements to ensure a decent existence for all those who lack sufficient resources.
- 4.17 Finally, it would be beneficial to carry out studies and research on the factors that both underlie and increase the financial weakness of consumers.
- 4.18 One of the factors that can hamper the workings of the internal market is that of consumers falling victim to economic violence when entering into contracts, as the balance of power is against them. This position may affect the consumer's will and constitute a lack of consent when consumer contracts are concluded. Under such conditions, consumers are forced to accept contracts that they have not freely agreed or accepted, or clauses containing disproportionate charges that they would not have willingly accepted when making their decisions.

- 4.19 The EESC should give consideration to this flaw affecting consumer consent to contracts, and to the distortion of competition that it causes in the internal market. The other EU institutions should give it proper attention, taking the necessary steps to prevent consumers falling victim to economic violence when they enter into contracts, on account of their weaker position.

Brussels, 15 October 2014.

The President
of the
European Economic and Social Committee

Henri Malosse

*

* * *

N.B.: Appendix overleaf.

APPENDIX
to the
OPINION
of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 54(3) of the Rules of Procedure):

a) **Point 1.3**

Amend as follows:

Moreover, the economic crisis has led to a widespread and ongoing trend for the gradual weakening of the economic situation of potential consumers, which suggests that this fall in consumption could continue to grow. To date, no systemic measures have been proposed by the public authorities to prevent it or to save consumers from such deterioration.

Reason

We need to define what is being weakened.

Result of the vote:

For:	49
Against:	86
Abstentions:	3

b) **Point 3.5**

Add the following:

There might even be abusive business practices which, in order to drastically reduce prices, encourage the sale of products that do not meet the requirements to be placed on the market, with the same applying to the provision of services. Consequently, all necessary measures should be adopted in order to prevent, where appropriate, the illegal sale of such products, with the Member States adopting an active and vigilant approach. As pointed out by the EESC¹², cooperation between the competent national bodies and the Commission should be stepped up by approving the revision of product safety rules, which should come into force immediately.

12

Opinion on Market Surveillance - [OJ C 271, 19.9.2013, p. 86](#).

Reason

The sale of goods/services which do not meet the requirements to be placed on the market cannot be sold so any sale of such goods/services is illegal.

Result of the vote:

For:	42
Against:	77
Abstentions:	14

The following sections of the section opinion were amended to reflect amendments adopted by the assembly but received more than one quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

c) Point 4.9

In short, these are actions related to economic, financial and employment scenarios and others arising from the adverse impact that the new technologies may have on market access for goods and services, with a view to protecting consumers' and users' rights. Advertising and marketing activities should therefore be included, as they can result in decisions that do not fit the situation or distort decision-making criteria.

Result of the vote:

For:	60
Against:	58
Abstentions:	9

d) Add a new point 4.15:

Recovery measures include those promoting alternative means of escaping the situation of economic weakness in the light of what is currently feasible. This would more accurately reflect the provisions of Point 5 of the UN's 1999 Guidelines for Consumer Protection, which stipulates that "Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries."

Result of the vote:

For: 66
Against: 63
Abstentions: 11
