

32 Recommendations

for stepping up the enforcement of consumer protection rules*

I. Establishing a stronger enforcement culture adapted to new challenges

1. Policymakers at EU and national levels should carefully consider enforcement and redress aspects when adopting new legislations and/or revising existing ones.
2. Authorities should be provided with sufficient resources to conduct their work and develop tools and skills to effectively enforce consumer protection rules, including in fast-moving digital markets.
3. Authorities should strike the right balance of incentives and disincentives via tough administrative fines or court actions, when needed. When required, authorities should depart from 'soft' enforcement approaches and increase the number of sanctions taken against rogue traders.
4. Where necessary, authorities should make full use of the enforcement tools available under the revised CPC regulation and increase the level of fines that are imposed on traders, as the Omnibus directive allows.
5. Stronger collaboration and coordination between enforcement bodies from different sectors (e.g. data protection/competition/consumer protection authorities) and between enforcement networks must be encouraged to combat unfair market practices.
6. Authorities should publicly share information about their upcoming enforcement priorities and increase transparency about their past activities. This includes the publication of the outcomes of their enforcement actions, annual reports with data on rogue traders, sanctions and identified unfair practices.
7. EU and national authorities should disclose information on the coordinated actions conducted at the EU level. This would be an effective way of coordinating and sharing knowledge on large cross-border actions.
8. Basic elements of a common administrative procedure should be established to handle cross-border cases under the General Data Protection Regulation (GDPR) cooperation mechanism (Art.60). The European Data Protection Board (EDPB) should publish

*These recommendations build on the report "Stepping up the enforcement of consumer protection rules" published in September 2020.

guidance on (inter alia) common timelines for carrying out investigations and adopting decisions.²

9. International cooperation on enforcement (e.g. in the context of the International Consumer Protection and Enforcement Network – ICPEN or via bilateral international agreements) should be further developed to fight- illegal practices from traders located in third countries and harming consumers.

II. Strengthening public enforcement through enhanced cooperation between consumer organisations and public authorities

10. Consumer organisations and enforcement authorities can strengthen each other's activities. Appropriate frameworks should be established to formalise their collaboration (e.g. via Memorandum of Understanding or similar protocols).
11. These arrangements should include built-in recognition of the distinct roles of the authority and of the consumer organisation and set up clear communication channels between them. There should be a clear understanding of the respective roles and deliverables of the authority and of the consumer organisation (signalling abuses, submitting evidence, informing about follow-up actions and outcomes of investigations, providing feedback), and also include the expected timeframes for actions and exchanges.
12. Rapid alert systems should be established allowing consumer organisations to warn authorities when they detect serious illegal behaviour or harm likely to affect many consumers. This includes early warning systems aimed at detecting new trends in marketplaces and signalling potential new consumer harms or risks. The information provided by consumer organisations should be treated with sufficient urgency.
13. Authorities and consumer organisations must respect confidentiality, as necessary. However, the secrecy of investigations by enforcement authorities should not be a barrier preventing any form of structured collaboration between authorities and consumer organisations as this issue can be solved via confidentiality agreements or other means.
14. Collaboration between consumer organisations and enforcement authorities can also be informal and operate at different levels, including via the sharing of information and expertise, during joint seminars or via informal exchanges of information. However, informal sharing and exchanges of information should not replace formal channels of collaboration.
15. The possibilities foreseen under the CPC regulation giving authorities the possibility to seek views of consumer organisations, on (inter alia) CPC common positions and traders' commitments should be fully exploited.

² See: *The long and winding road: two years of the GDPR: A cross-border data protection enforcement case from a consumer perspective*, 5 August 2020.

III. Developing a supportive ecosystem for court actions by consumer organisations, including in cross-border contexts

- 16.** Court actions in general are too slow. Consumer organisations should benefit from “fast-track” review procedure with specific procedural calendars to ensure that their complaints can be reviewed swiftly.
- 17.** Obtaining a court decision in one Member State does not guarantee that the trader will change its practices in the other Member States. The European Commission should examine and report on options for developing an EU-wide effect of administrative decisions and court judgements supporting cross-border actions of consumer organisations.
- 18.** Support (through guidelines, sharing of information, translation of documents and availability of foreign decisions) should be available to assist consumer organisations when bringing cross-border claims.
- 19.** The upcoming directive on representative actions for consumers will enhance consumers’ access to justice. Member States must ensure that collective redress mechanisms, adopted in accordance with this directive, are in practice effective instruments ensuring compensation for consumers in mass harm situations.
- 20.** Collective redress instruments, while complying with robust procedural requirements, should not be too burdensome or complex for consumer organisations. Those mechanisms should build on the potential offered by new technologies (e.g. online platforms) to reach out to, inform, build intelligence, and collect complaints from harmed consumers.
- 21.** When bringing collective actions, consumer organisations should benefit from adapted court costs and other financial arrangements (e.g. via legal aid, a dedicated fund, or other forms of financial support). Those possibilities are foreseen in the directive on representative actions for consumers, but the Member States can also come up with other solutions nationally.

IV. Upgrading the consumer ADR/ODR framework

- 22.** When not available, Member States should establish a single online gateway to channel consumers to the relevant ADR entity for their dispute. The gateway should provide clear and easily accessible information about the ADR procedures as well on the possible outcomes that consumers may expect.
- 23.** For essential services, in sectors where traders regularly fail to comply with their obligations and in sectors identified by the EU Consumer Scoreboard as raising the largest number of complaints (e.g. transports), participation in consumer ADR should be mandatory for traders.
- 24.** As much as possible, decisions issued by ADR bodies should be binding on traders. When the decisions are not binding and the trader refuses to comply, the trader should still be required to clearly justify his decision and to indicate the additional venues of

redress that are available to the consumer. ADR bodies should systematically publish the identities of traders not complying with their decisions.

- 25.** Consumer ADR bodies should openly publish their decisions, disclose the names of traders targeted by high number of complaints, and systematically report on the systemic problems and sectoral trends that they identify. These reports and data should be communicated to the relevant enforcement authorities for additional follow-up actions, when needed.

V. Strengthening consumer organisations' capacities

- 26.** Capacity-building and enforcement programmes for consumer organisations are essential to ensure that their actions follow the development of new market practices and cope with the new difficulties arising out from the digitalisation and the internationalisation of rogue practices and unfair behaviour.
- 27.** Coordinated enforcement actions, collaboration, and exchanges of information between consumer organisations in Europe and beyond is pivotal, especially to ensure that consumer organisations with lower resources or more limited capacities can remain active watchdogs in their countries.

VI. Exploring the relevance and added value of new technologies for stepping up consumer protection

- 28.** The use of new technologies (e.g. online platforms collecting complaints or used to report scams, apps supporting consumer information and consumer empowerment, and other big data instruments used to identify sectoral trends and systemic problems) may step up and facilitate the enforcement of consumer rights and the monitoring of markets. These techniques should be further explored at EU and national levels.
- 29.** Consumer associations should be equipped financially to propose and implement such digital tools and services.
- 30.** Consumer organisations should have access to non-personal high-quality market data allowing them to detect illegal behaviour and market patterns.
- 31.** Consumer organisations can contribute to and support the upcoming "e-enforcement laboratory" set up by the European Commission. Where relevant, the Commission should seek ways to associate consumer organisations with this new tool.

VII. Upgrading EU private international law instruments to ensure the effective resolution of cross-border mass claims

- 32.** The European Commission should come up with propositions to amend the existing EU private international law instruments in order to ensure the effective resolution of cross-border mass claims and to secure fair treatment for all EU consumers.