

OPINION
European Consumer Consultative Group
Opinion on consumers and vulnerability

Adopted on 7th February 2013 by ECCG Plenary

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1. Context

- The ECCG held an interactive session about consumers and vulnerability at its meeting on 28-29 June 2012, preceded by a presentation by DG Energy about the Energy Sector Working Group on Vulnerable Consumers and by ANEC about the safety of vulnerable consumers;
- Following the discussions and Working Groups feedback on 28-29 June 2012, it was decided to prepare a first draft of a future ECCG Opinion on the subject for further discussion at the November ECCG meeting;
- The Commission lead services will take into account the future ECCG Report/Opinion on consumers and vulnerability in their activities and in their response to the European Parliament Resolution of May 2012.

2. Introduction

"Vulnerable consumers" is a well-known expression but there is no commonly accepted or widely agreed legal definition due the heterogeneity of this group. Indeed, each sector has its own approach for considering a group as composed of "vulnerable consumers". Temporary life events (childhood, illness...) or market factors (information asymmetry, market power, exploitative supplier motivations and complex products/transactions, education...) as well as non-accessible environments, systems, products and services make consumers vulnerable.

The European Commission aims to improve consumers' confidence in the Single Market and the concept of "the empowerment of European consumers" is often promoted in this respect. However, a better understanding and increased consideration for all consumers' needs should be developed in order to provide and inclusive and targeted policy approach in devising the right policies for ALL European consumers.

Empowered consumers

In general the assessment of how much consumers are empowered and exercise their rights is rather negative (albeit with important regional, educational and socioeconomic differences) and it is clear that consumers who are not able to acquire the knowledge needed to exercise their rights become vulnerable or increase their vulnerability¹. The reasons of this lack of knowledge vary from lack of access to digital services to low numeracy and literacy as well as even the influence of sophisticated marketing methods.

Numerous elements converge to disempower consumers by making it impossible for them to understand and act on the information they receive. This increase in disempowerment, the reverse of what official strategies aim for, is compounded by the fact that current policy initiatives do not necessarily take into account the

¹ SWD(2012)235 final, 19.07.2012

different information needs of people according to their particular conditions or vulnerabilities. Consumer policy measures must therefore aim to improve consumer knowledge, for example, by providing 'choice filters' (something that consumer organisations are very good at providing for their members).

Services sector liberalization

The liberalisation and globalisation of several important (and essential) services in the past years such as energy provision, travel and financial services has resulted in increased complexity for consumers. After the energy sector liberalization, the guarantee of supply for everybody was added to the concept of universal services (Universal Services Directive), an obligation which not only refers to vulnerable consumers "but includes them in its protective realm"². All consumers can be vulnerable at one time or another, but there are factors and circumstances which may create specific on-going hardship for some consumers³.

Use of new technologies to access and provide information and exercise rights

Consumers who do not have access to digital services often belong to low-income and low-education groups and can be considered as vulnerable. They are not able to benefit from the opportunities presented by the Internet in terms of consumer information and better prices/deals. The same holds true for the use of better redress opportunities as foreseen in the proposed On-line Alternative Dispute Settlement Regulation.

2.1 Policy & legal background

EP report on a strategy for strengthening the rights of vulnerable consumers

The European Parliament adopted on 22 May 2012 a non-legislative report on "vulnerable consumers"⁴. It calls for a genuine European strategy to systematically and comprehensively strengthen the rights of vulnerable consumers. The EP underlines that until now consumer vulnerability has been tackled on a case by case basis and that it should be looked at from a horizontal and sectorial approach. It should be a priority in the Consumers Programme 2014-2020. This would be done through strengthening legislative powers and promoting a sectorial approach because the variety of different forms of vulnerability makes the adoption of a single uniform instrument impossible.

² H. W. MICKLITZ, Do consumers and businesses need a new architecture of consumer law? A thought-provoking impulse, EUI working papers, law 2012/23 (department of law), p. 6.

³ ISO COPOLOCO scoping paper on Vulnerable Consumers, August 2012

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0209%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

EC Communication Consumer Agenda and EC proposal for a Regulation for a Consumer Programme 2014-2020

In the Commission's Consumer Agenda adopted on the same day as the Parliament's report, the issue of "vulnerability" is clearly identified⁵. Under the heading "Social exclusion, vulnerable consumers and accessibility", it is acknowledged that the economic crisis led to a very significant fall in income or purchasing power for some consumers, thus increasing the risk of social exclusion and the risk that citizens are unable to afford essential goods and services. It is specified that "the current context may also exacerbate the disadvantaged situation of vulnerable consumers, such as people with disabilities or with reduced mobility, who face difficulties in accessing and understanding information and in finding appropriate products and services on the market."

On 15 November 2011, the European Parliament had adopted another own-initiative report drafted by the IMCO Committee, this time on a new strategy for Consumer Policy/Consumer Agenda⁶. In its Resolution, the Parliament called on the European Commission, amongst other issues, to "guarantee special protection for groups of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity, or made vulnerable by their social or financial situations (...)"⁷.

Revision of the General Product Safety Directive & Market Surveillance

Another European Parliament report on the revision of the General Product Safety Directive (GPSD) also called 'in order to ensure the safety of the widest range of particularly vulnerable consumers, for the introduction of a reference to people with disabilities (along with the references to children and elderly people that are already present)'⁸.

It suggested focusing on the most vulnerable consumers in the single market i.e. children, elderly and people with disabilities, and stressed that the European Union has a special responsibility towards these groups, including in issues of product safety.

Commission Staff Working document on knowledge-enhancing aspects of consumers empowerment 2012-2014

In July 2012, the European Commission released a Staff Working paper about the role of enhancing knowledge for consumer empowerment⁹. The Consumer Agenda stresses the importance of consumer empowerment in driving a smart, sustainable and inclusive growth.

⁵ Point 3.2., European Commissions « Consumer Agenda » COM(2012) 225 final

⁶ 2011/2149(INI)

⁷ Paragraph 10

⁸ 2010/2085 (INI) EP Own Initiative report

⁹ SWD(2012)235 final, 19.07.2012

2.2 Facts & figures

The world population has doubled since 1968, surpassing 7 billion on 31 October 2011¹⁰. Lower mortality rates, longer life expectancy and large youth populations in countries where fertility remains high, all contributed to the rapid population growth of recent decades. As a result, there is an increasing trend of consumers who are (very) young or (very) old. The latest data about consumer empowerment show, that the most vulnerable consumers are the oldest aged above 55 and the youngest group aged 15-24¹¹.

The proportion of older persons is increasing at a faster rate than any other age group. In developed countries, the proportion of older people already exceeds that of children. One fifth of the population is 60 years or older; by 2050, that proportion is expected to rise to almost a third, and there will be two elderly people to every child. Europeans reaching the age of 65 in 2050 can expect to live on average between four and five years longer than those reaching 65 today. There will be a sharp increase in the number of people surviving to the ages of 80 and 90, leading to many of them spending several decades in retirement and reaching an age where infirmity and disability are more prevalent¹². Moreover, they constitute an important market share with an unequal share of disposable incomes.

50 million disabled citizens, representing more than 10% of the EU population, also have the right to become equal citizens in the European Society¹³. 91% of European citizens agree to spend more money in eliminating physical barriers for people with disabilities¹⁴. This overwhelming support is important when considering the relation between disability and ageing, and planning the actions to cope with demographic trends.

Consumers' needs change with age. And so do their vulnerabilities, as well as their perceptions of the effectiveness of consumer protection policy. Although 70% of 15-24 year olds trust public authorities to protect their rights as consumers, this dropped to 59% for those over 54. The same trend is observed for consumer protection measures: 63% of 15-24 year olds agree they felt adequately protected by existing measures, compared with 56% for those over 54.¹⁵ However, in addition to these age determined groups, the most vulnerable consumers appear to be those who never used a computer as they show least empowered consumer behavior. Secondly, research confirms that very vulnerable are those who have difficulties with paying their bills, those low on the social staircase, and retired persons¹⁶.

¹⁰ <http://www.unfpa.org/pds/ageing.html>

¹¹ Special EUROBAROMETER n°342 on CONSUMER EMPOWERMENT, 2012

¹² European Commission, The demographic future of Europe – from challenge to opportunity, 2006

¹³ <http://www.edf-feph.org/en/welcome.htm>

¹⁴ Euro barometer "Discrimination in the European Union" 2007 on disability matters

¹⁵ Flash Eurobarometer 299, March 2011

¹⁶ Special EUROBAROMETER n°342 on CONSUMER EMPOWERMENT, 2012

As the recent data by Eurostat show, 119,6 million or 24.2% of the population in the EU27 were at risk of poverty or social exclusion. This poses consumption in general under scrutiny and opens a new perspective and prioritisation necessities on decision makers and consumer policy at the national and the EU level.

A modern consumer policy has to meet all these needs.

3. Elements of a definition of vulnerable consumers and vulnerability

3.1 Introduction

It is not easy to have 'one size-fit all' definition as very consumer can be vulnerable in certain circumstances and in a certain moment. In addition it must be taken into account that specific groups are more structurally vulnerable, e.g.: minority groups, people with poor numeracy and literacy skills, elderly, people at risk of poverty and people with disabilities.

Thus below a two-fold approach is proposed: on the one hand a horizontal definition called "the personal dimension or horizontal approach" of vulnerable consumers, which depends on personal characteristics of consumers and it is generally valid in all situations. This definition is closely linked to the definition of the "average consumer".

And because anybody may become vulnerable in some situations and consumers can 'move in and out' of vulnerability depending on the specific market circumstances, "situational vulnerability or sectorial approach" is proposed as the second element for defining vulnerable consumers.

3.2 Vulnerable consumers: personal and horizontal approach

The concept of vulnerability is linked to individual characteristics like age as well as physical and mental ability. Often vulnerability implies an association with the concept of risk. For instance, children are vulnerable as they are often unaware of the dangers they face. Key risk factors for vulnerability include age, disability, literacy and numeracy skills and other aspects of personal capacity and factors such as living with physical health issues or mental illness, suffering from a cognitive impairment, living with learning disability, etc. must also be taken into account when talking about vulnerability.¹⁷

The vulnerability can be permanent or be a long-term state; it can also be a momentary state. According to ISO 26000:2010 'Guidance on social responsibility', a vulnerable group is a "group of individuals who share one or several characteristics that are the basis of discrimination or adverse social, economic, cultural, political or health circumstances, and that cause them to lack the means to achieve their rights or otherwise enjoy equal opportunities".

¹⁷ OFGEM, *Proposals for a new Consumer Vulnerability Strategy*, Consultation, 124/12, 28 September 2012, p. 12.

Regarding the difficulties faced to define the notion of “vulnerability”, the national experiences and measures in this field could be a good starting point to look at: for example, German legislation has a broader definition of the notion of “vulnerable consumers” than the EU directive on unfair commercial practices. It includes commercially inexperienced consumers and consumers in fear or under pressure.¹⁸

3.2.1 The leitmotiv of the “average consumer”

European law and policy are based on the notion of the “average consumer”. This concept was developed by the Court of Justice of the EU (see the famous case of *Gut Springenheide and Tusky*¹⁹). According to the EU case law, in deciding whether a traders’ practice is misleading or not for a consumer, the judge has to apply an objective legal criterion, in the form of what is now known as the “average consumer standard”. This is the consumer who is reasonably well informed and reasonably observant and circumspect.

Consequently, the benchmark of the average consumer as developed in the case law of the European Court of Justice to establish what are unfair and misleading business practices is being set too high in many cases and has led to a detrimental and not consumer oriented development in the EU: it obliges national courts to assume that the consumer is always informed, observant and circumspect and thus can potentially grant less protection.

The traditional definition of the ECJ does not correspond to the reality of the majority of consumers and overstates the qualities of the typical consumer. Often consumers do not have the time or the inclination to investigate offers as much as the law expects them to do. As a result, there is often a gap between the way the law addresses consumer detriment and the practices that actually cause consumer detriment in practice.

With the directive on unfair commercial practices, this concept is modified in relation to practices directed at a group of vulnerable consumers. This “vulnerable consumer” standard can then displace that of the “average consumer”. However, this legal concept has raised many questions. The European Commission is expected to issue a report on the implementation of the unfair commercial practices directive and hopefully will shed more light on the effect of this provision.

While this more recent legislative approach is welcome in principle, it also raises more profound questions as to the acknowledgement and application of the traditional concept of the consumer as the systematically weaker party in the market, who by definition and in all circumstances needs to be protected. Is this

¹⁸ Prof. Dr. H. SCHULTE-NÖLKE, S. CHARLTON and W. Vos, “Vulnerable consumers in German Law”, in *Compilation of Briefing Papers on Consumer Vulnerability*, 2012, p. 53.

¹⁹ Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657;

traditional concept of the consumer no longer valid? Do only “vulnerable” consumers need protection?²⁰

New perspectives

In this context is worthwhile looking beyond European borders: the Supreme Court of Canada recently rendered a remarkable decision: by overruling a judgment of the lower Court of Appeal which had based its opinion on the usual Canadian standards of the average consumer - very similar to the EU standard - the Highest Canadian Court introduced a new, more realistic and pro-consumer oriented concept for measuring the potential unfairness of a business practice: It stated that “an average consumer [is a person] who is credulous and inexperienced and takes no more than ordinary care to observe that which is staring him or her in the face upon first entering into contact with an entire advertisement”²¹.

This ruling should give a new spin to the discussion also in the EU and should serve the European Commission as inspiration for further initiatives.

3.2.2 Lessons to be drawn from behavioural economics or the inexistence of the *homo economicus*

The traditional economic theories of the “*homo economicus*” assume that people are on average rational. The concept of bounded rationality revises this assumption to account for the fact that perfectly rational decisions are often not feasible in practice because of the finite computational resources available for making them.

“Bounded rationality” is the idea that in decision-making, rationality of individuals is limited by the information they have, the cognitive limitations of their minds, and the finite amount of time they have to make a decision. It was proposed by leading researchers as an alternative basis for the mathematical modeling of decision making, as used in economics and related disciplines²²; it complements rationality as optimization, which views decision-making as a fully rational process of finding an optimal choice given the information available. Findings of behavioral economics clearly prove that most people are only partly rational, and are emotional/irrational in the remaining part of their actions. For policy makers, this should lead to the conclusion that measures to protect consumers cannot always simply rely on consumers’ capacity to make the right decision, but should also impose obligations on producers and service providers.

²⁰ Hans – W; Micklitz “Do consumers and businesses need a new architecture of consumer law?”, EUI working papers, law 2012/23, p. 22: “Thirty years ago this translation would have been interpreted as a pleonasm, since the consumer was per se vulnerable. Today there is a message hiding behind the doubling-up. The consumer is not per se vulnerable: only particular groups deserve and need protection”

²¹ Richard v. Time Inc., 2012 SCC 8.

²² H. SIMON, *Models of man*, Wiley, 1957.

Concluding from these results, it is clear that the definition of the “average consumer” as given by the European Court of Justice is not suitable to assessing consumers’ capability of dealing with business practices.

3.3 Vulnerable consumers: situational and sectorial approach

3.3.1 Introduction

Even if vulnerability is a constantly changing state that can affect anyone and at any moment of a lifetime, it appeared through practice that vulnerability manifests itself in some particularly sectors: Thus in addition to individual characteristics (age, abilities, etc.), consumers can become vulnerable because of external factors such as in the case for example of complex market conditions in liberalized markets.

If consumer policy is to be effective, it is a prerequisite to protect vulnerable consumers and consumers in vulnerable situations. However, present consumer legislation ranging from product safety legislation to financial services regulation does not always meet the needs of vulnerable consumers.

3.3.2 Relevant consumer sectors

3.3.2.1 Product Safety

Legislation

In product safety legislation and standardisation, the age and abilities of consumers must be taken into account in the assessment of risks if injuries are to be prevented.

Vulnerable consumers can be effectively protected only if their (foreseeable) behaviour is duly taken into account by manufacturers when designing products. If manufacturers are allowed to rely on the concept of “intended use” of the product as laid down in the instruction for use, consumers who are too young to read or can-not read, are at a higher risk of being exposed to harm or injury.

However, apart from the GPSD²³ and the Toys Directive²⁴, the other consumer relevant product safety pieces of legislation do refer to the concept of “intended use”. “Intended use” does not specifically address the risks that vulnerable consumers may face.

Standardisation and product design

The freedom allowed to industry to self-regulate through standards needs to be accompanied by an obligation to provide the highest level of protection to consumers that is economically and reasonably possible

²³ Directive 2001/95/EC

²⁴ Directive 2009/048

In the last decades insights and methods have been developed within ethics and other disciplines that can contribute to a more socially responsible innovation, good policy and adequate political decision making. One example is the concept of Value Sensitive Design (VSD). It means thinking, in an early stage of the development process or application of new technology or product, about relevant social and moral values and the integration of those in the development process. Ensuring safety of all consumers irrespective of their ages and abilities is not only a technical issue, but goes to the heart of good consumer safety policy-making and injury prevention.

Market surveillance and EU injuries database

When setting priorities for market surveillance, the protection of vulnerable consumers should be taken into account.

Accident and injury data is critical in the setting of priorities, the development of policy and the determination of preventive actions, especially concerning vulnerable consumers. Data is also needed to evaluate the effectiveness of preventive measures and the impact of the introduction of a new/revised regulation or standard²⁵.

3.3.2.2 Access to safe and healthy food

All EU consumers should have access to safe, affordable and healthy food, produced in a sustainable way.

Consumers are concerned about on the one hand the recent dramatic increases in prices and on the other hand about exposure to risks such as the use of nano-materials and chemicals in food and the health consequences of this, in particular for the most vulnerable consumers such as children.

The most obvious safety and health issues are those that put consumers with food related disabilities and food allergies at risk.

In relation to the increasing obesity rates and diet-related diseases which need to be tackled, consumers and in particular vulnerable consumers need to be protected from unsubstantiated and misleading claims about the nutritional value of food. Only truthful information will enable them to make the healthiest choice.

Despite the long standing calls from the EU consumer movement, marketing to children and sponsorship of children's programmes by companies producing foods high in fat, sugar and salt have not been dealt with at EU level.

²⁵ ANEC Position paper: "How to protect vulnerable consumers?"(ANEC-DFA-2011-G-071final)

3.3.2.3 Energy

The right to have access to “services of general interest”, is an important concept in the EU. All citizens are guaranteed a minimum level of service of water, energy and telecommunications.

Energy is particularly important for European consumers in times of economic crisis. Access and affordability of energy is an increasing problem and needs to be better addressed inter alia through social tariffs, debt relief and easy payment facilities.

All homes should be improved in terms of energy efficiency starting with those occupied by the fuel poor first. Improvements should be free to low income households and not funded by loans since many low income households are reluctant or cannot afford to take out loans. Providing energy (electricity, gas...) should be recognized as a universal service.

All consumers should have access to their consumption data so that they can use their data to compare offers and get advice based on reliable price comparison websites. A reporting framework that enables comparison of energy efficiency programmes for vulnerable consumers across Member States should be established, so that lessons can be learnt. Systematic monitoring of consumer protections (bills and tariffs confusing)²⁶ should be undertaken by regulators. Switching energy providers should be easier.

Member States should be encouraged to implement strategies that reflect the different needs among different groups of consumers in order to make it easier for all consumers to make energy-efficient choices. It is essential that policy focuses on the most long term and sustainable solution to fuel poverty, namely radical improvement to the energy efficiency standards of housing, particularly that occupied by low income and vulnerable households.

3.3.2.4 The digital environment

Consumers are more vulnerable to unfair commercial practices by traders on the Internet and improvement of protection is necessary. Traders may easier than in the off-line world take advantage of the limits and restrictions of this means of communication and convey misleading advertising and pre-contractual information. This problem is particularly relevant for mobile commerce, whereby terms and conditions risk not to be displayed on the small screen of a mobile phone (e.g. SMS loans are problematic).

Children and young people must not be targeted by websites using profiling and behavioural marketing techniques²⁷. Additional rules should be put in place for

²⁶ Currently, there is an infringement in 18 Member States about the implementation of the Directive.

²⁷ The provisions of the unfair commercial practices Directive may be helpful in this respect (Art. 5.3, 8 and Paragraphs 11 and 28 in the Black list).

the protection of children and other vulnerable consumers – in particular due to their lack of critical judgment and understanding of marketing.

In particular, the practice of making children agree to the use of their data for marketing purposes before they can access and use a service should be forbidden. Children and young people cannot give informed consent as they cannot be required to read and understand the highly complex terms of condition/privacy notices.

Moreover, vulnerable consumers should not be targeted by adverts on tobacco, drugs, alcohol, pornography, medical conditions, gambling or in any sensitive areas for instance regarding marketing targeted at those suffering from illness, based on financial status or personal beliefs.

On the I-net, consumers are increasingly exposed to on-line profiling. Lack of control over personal data, lack of transparency on their use, price discrimination and reduced choice could be the detrimental results of such practices. The means of implementation of consent for online targeting and profiling of consumers thus should be flexible and user-friendly – in particular as independent studies on the acceptance of European citizens of such practices and their effects are still missing.

Finally, the risk of the so-called “digital divide”, which can create real inequality between consumers, needs to be address especially as far as consumers with disabilities and elderly consumers are concerned. The access to the Internet should be recognized as a “universal service”.

3.3.2.5 Transport

The effective application of the EU legislation protecting air passengers and especially “Persons with Reduced Mobility” (PRM) to in particular ensuring equal access to air transport is essential.

The protection of “stranded passengers” who for example cannot return to their homes because the inbound flight has been cancelled due to the fact that the airline has gone finically bankrupt is still missing at EU level. These passengers are particularly vulnerable and in need of assistance.

3.3.2.6 Health

Disparities or inequalities in health are a matter of increasing concern in Europe. Although all twenty seven Member States have policies of universal access to health care, it is clear that this has not prevented major differences in health from arising. EU statistical data show widespread differences in health among countries and among socio-economic groups. Vulnerable consumers such as the disabled, those suffering from mental or chronic illnesses, the elderly etc. suffer a particularly greater burden of mortality and disease. Barriers to health care access include lack of health insurance, direct financial costs of care,

geographical disparities in provision, waiting times, lack of information, discrimination, language barriers, health literacy and socio-cultural expectations in relation to life and care use.

The current economic crisis may also have an impact on health and increase health inequalities through a deterioration of social determinants of health and of the access to quality health and social care by those in lower socio-economic groups. This is the case if access to care depends on being employed or having financial means, or if the EU Member States cut the resources allocated to the health and social care sectors, leading to lower coverage or quality of care.

Patients are vulnerable consumers by definition. Those who are affected by a chronic condition or a life threatening disease are particularly vulnerable because of the asymmetry of information they are confronted with compared with the providers of goods and services, namely doctors, pharmacists, hospitals, pharmaceutical companies. In most cases they are not those who choose the health care product - medicines and/or medical devices – and also in those situations where they can choose (e.g. among different treatment options) the choice can be scaring and disempowering because their own well-being or the health of their beloved is at stake. Consumers need more information on the quality and the safety standards of the medicines, medical devices and health services they use but also support and advice from health care professionals. The information should be user friendly and the functioning of the health care sector should be more transparent.

3.3.2.7 Financial services

The adoption of a regulation on access to a basic payment account²⁸ for the less, privileged of society (migrants, people who lost confidence in bank system, homeless...) has now been announced in the Commission's "Single Market II Act".

Moreover, consumers who suffer from over-indebtedness need specific protection.

The simplification of financial services is a key objective in order to protect consumers. Even more "sophisticated consumers" are not able to deal with the in transparency and the complexity of financial services products, which however every consumers needs in his/her everyday life as well (for example regarding bank fees) as for ensuring pension schemes (investment products, pensions, life insurance ...).

²⁸ [Recommendation on access to a basic payment account](#), C(2011)4977, 18.7.2011

3.3.2.8 Enforcement, Collective Redress and Alternative dispute resolution

Improvement of access to justice in general through improving EU wide enforcement through public and private means and the achievement of EU wide alternative dispute resolution systems in particular would benefit consumers, who are in their majority vulnerable when it comes to the enforcement of their rights. Consumers belonging to a vulnerable group are even less likely to seek redress and in many instances they remain empty handed and not compensated, because they do not know where to turn to. They are intimidated by procedures, costs... This applies both to individual redress and to collective redress means, which are still missing at the EU level and in many Member States.

4. Conclusions

This Opinion describes the phenomena of “vulnerability” of consumers currently discussed at EU and national level and proposes a concept for a definition of “vulnerability”, taking into account socioeconomic and legal elements and looking at horizontal and sectorial angles of such a definition.

Consumer vulnerability can be determined in the first place by personal characteristics such as age, disability, or income (“the personal dimension”). Because these socio-economic factors have an impact on the way consumers act in general, the ‘personal dimension of consumer vulnerability’ also triggers the question on whether the present “horizontal approach”, based on the notion of ‘average consumers’, is fit to protect all consumers.

Non-accessible environments, systems, products and services are a very important factor of always causing vulnerability in consumers and can be a case of discrimination.

However, today’s complex market situations are resulting in more difficulties for some categories of consumers and all consumers, irrespective of age and/or knowledge, can be vulnerable at a certain point in time because of the specific situation of certain markets where consumers have difficulties in, for example, accessing the information they need to make the right choices and as a result, there is a greater risk of consumer detriment (“the situational dimension”). The ‘situational vulnerability’ triggers the question on whether specific sectors and markets are delivering for consumers in general and under which circumstances.

Against this background, the ECCG considers that the specific needs of consumers who belong to a vulnerable consumers group should be identified and integrated more systematically and regularly into European and national policy making, and that also the perception of the “average” consumers - as opposed to the “vulnerable” consumers - requires re-thinking and adaptation to a modern and behavioral economics based approach.

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The ECCG thus proposes solutions firstly for defining and approaching the various aspects of vulnerability and secondly aims at identifying and raising awareness about the various aspects of vulnerability in different policy fields.

The ECCG underlines that policy makers need to better understand the factors that cause consumers to become exposed to a greater risk of vulnerability and thus disadvantaged in order to elaborate the right policy responses.

The ECCG stresses in particular that the concept of “empowerment of consumers” must not preclude protection of consumers whether vulnerable or not.

Policy makers need to genuinely put the interests of consumers and particularly of vulnerable consumers at the heart of decision making rather than just “paying lip service” to them especially if the objectives of the Consumer Agenda 2012-2014 is to be fulfilled.

Against this background a set of recommendations is proposed for the two levels identified in the report:

5. Recommendations

The ECCG thus calls on the European Commission and EU legislators to adopt the following:

Horizontal legislative and policy measures

- Undertake/commission targeted behavioral economic research and accidents statistics data to gather more information about specific factors of vulnerability and their impact on certain categories of consumers²⁹;
- Establish a qualitative and quantitative mapping of various aspects of vulnerability and measures which can contribute to addressing the issue in the different policy sectors;
- Adopt a European Commission work plan accompanying the “Consumer Agenda” to set out priorities to protect consumers in vulnerable positions
- Redirect the EU legal benchmark of the average consumer towards a more realistic and people focused concept through an EC recommendation, which introduces a new and more flexible concept of a consumer-taking into account that consumers are often credulous and inexperienced and

²⁹ The traditional research approach distinguishes empowered consumers from disadvantaged consumers on the basis of whether or not they belong objectively to a particular group. In contrast, the newer research approach considers every consumer as potentially vulnerable on a gradual scale; the extent of vulnerability of an individual consumer depends on the interaction between the consumer’s individual combination of characteristics on the one hand and marketing practices on the other.

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cannot take a lot of time and care to try to understand what is behind traders information and practices;

- This definition should be used in all relevant-proposals for legislation, with the possibility to adapt it, when needed;
- Gather best (national) practices and appropriate non-policy solutions with long-term potential to better target vulnerability;
- Ensure that all proposals for EU legislation which have an impact on consumer wellbeing provide for a consumer impact assessment, including the evaluation of the impact on the respective vulnerable groups based on consultation with consumer representatives;
- Study and discuss how the information provided to consumers on goods and services can be improved to be easily accessible, clear, unbiased, accurate, up-to-date, taking into account the special needs of vulnerable groups;
- Encourage effective consumer education as part of the curriculum in EU schools to better prepare children as well as part of extra curricula activities.

Sectorial legislative and policy actions

- Align the safety concept in sectorial product legislation (eg : R&TTE Directive³⁰ and Low Voltage Directive³¹) with that of the General Product Safety Directive ("foreseeable use");
- Based on the new EU legislation , ensure that European standards complementing legislation are developed with effective consumer participation;
- Ensure that the needs of older people and people with disability are duly taken into account in other relevant Commission's policies dealing with accessibility of goods and services;
- Adapt social tariffs for energy, telecommunications, urban transport;
- Support organisations and consult with those representing vulnerable consumers at national and European level;
- Propose a legislative measure requiring airlines to guarantee the protection of stranded passengers in case of airlines insolvencies and oblige airline companies to adhere to Alternative Dispute Resolution (ADR) systems;

³⁰ Radiocommunications and Telecommunications Terminal Equipment Directive (1999/5/EC)

³¹ Low Voltage Directive (LVD) 2006/95/EC

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- Efforts need to be stepped up to create an environment which makes the healthier choice the easier and more affordable choice when it comes to choosing food. Related to this, there is a need for more comprehensive policies that cover all forms of marketing and advertising of less healthy foods to children up to 16 and an increase in healthier food promotions in stores;
- Ensure every consumer has the right to a basic payment account, i.e. not only the financially excluded. A basic payment account should be available to all customers;
- Ensure information on bank account fees is transparent and comparable across financial institutions to enable consumers to shop for better deals and spur competition in the market;
- Ensure better use of existing General Consumer and Money Advice Services (eg: in Finland, UK, Ireland) and make available independent advice on financial services to consumers across the EU, especially as regards major financial decisions;
- Based on research about the situation of over indebted consumers in the EU, examine and consult with stakeholders on what measures could be made at European level to prevent such situations and find solutions;
- Raise awareness about and support projects to tackle health inequalities more effectively in particular regarding vulnerable groups including elderly, children and young people;
- Promote initiatives to improve health literacy at EU and national level and ensure an efficient implementation of the Directive on patients' rights in cross border health care to ensure that Member States provide information on the quality and safety of health care, the price and reimbursement for health care services and information on complaint and redress systems;
- Improve consumer information such as package leaflets for pharmaceuticals and product information for medical devices (e.g. implant card) by involving patients and consumers organizations;
- Address vulnerability in the energy sector through a proper transposition of the relevant provisions of the third energy legislation package aiming at the best protection to help vulnerable consumers in their country;
- Ensure comparability of energy offers, which is of crucial importance in particular for less affluent and more vulnerable consumers. Switching needs to be facilitated and consumers need to get independent advice so they can decide for themselves what is best for them;

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- Require that all digital communication tools have integrated privacy by design in order to in particular protect vulnerable consumers right from the start;
- Introduce an effective EU-wide collective judicial redress, to prevent and compensate harm, both at national and cross-border level to ensure consumers access to justice;
- Encourage national enforcement authorities to work closely together, as well as with consumer organisations, to close any enforcement gaps that could arise within the EU;
- Ensure that the implementation of the Alternative Dispute Resolution Directive results in access for all consumers to truly independent and effective systems of alternative dispute resolution across the EU;
- Ensure that all EU consumers benefit from a neutral internet, where they are able to access, use, send, post, receive, or offer any content, application, or service of their choice irrespective of source or target, while respecting existing laws on e-commerce and intellectual property;
- Establish a forward-looking and balanced copyright framework, by creating a clear set of mandatory consumer rights for lawful use throughout the EU, in particular also for vulnerable consumers.

Rapporteurs for this ECCG opinion: Chiara Giovannini (ANEC); Ursula Pahl (BEUC)

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