European Commission

WORKSHOP 3
ENHANCING THE EFFECTIVENESS OF THE INJUNCTION PROCEDURE

TIME: 10:45 - 13.30
MEETING ROOM: SICCO MANSHOLT

17 October 2016

EUROPEAN CONSUMER SUMMIT
BRUSSELS

Programme

Chair: **Martins Prieditis**, Policy Officer, DG Justice and Consumers, European Commission

Rapporteur: **Caroline Cauffman**, Professor, Maastricht University (Netherlands)

10:45 - 11:00

WELCOME AND INTRODUCTORY REMARKS BY THE EUROPEAN COMMISSION

11:00 - 11:50

PANEL DISCUSSION

Objective: Participants will be introduced to the current, preliminary findings of the Commission's external study supporting the Fitness Check. They will then hear presentations on several aspects of the functioning of the injunction procedure at the national level and some ideas for possible solutions at the EU level. The presentations will be given from four different perspectives: public body, academia, consumer association and business.

11:00 - 11:15

Presentation of the first results of the Study supporting the Fitness Check of EU consumer and marketing law – **Peter Rott**, Professor, University of Kassel (Germany)

11:15 - 11:35

STAKEHOLDER VIEWS

- **Cecilia Tisell** - Director General of the Swedish Consumer Agency and Swedish Consumer Ombudsman
- **Andrée Puttemans** - Professor, Université Libre de Bruxelles (Belgium)
- **Otmar Lell** - Team Leader, Team Legal Affairs and Trade, Verbraucherzentrale Bundesverband e.V. (VzBv) - Federation of German Consumer Organisations
- **Malte Firlus** - Senior Manager European Affairs, Deutsche Telekom, ETNO - European Telecommunications Network Operators' Association

11:35 - 11:50

QUESTIONS & ANSWERS

11:50 - 13:00

DISCUSSION WITHIN GROUPS

Objective: To discuss, within groups of 10-12 persons, and to respond to two cross-cutting questions: "*What works well*" and "*What needs to be changed*" in the following areas:

Topic 1 - **Injunction procedure: How to improve its effectiveness as consumer law enforcement tool?**

Topic 2 - **How to encourage the use of the injunction procedure for stopping cross-border infringements of consumer law?**

13:00 - 13:15

VOTE

Objective: Participants' vote on questions presented below in the background information and arising from the discussion

13:15 - 13:30

CONCLUSIONS FROM THE WORKSHOP PRESENTED BY THE RAPPORTEUR, CAROLINE CAUFFMAN AND Q&A

Background information

The Injunctions Directive ensures that a court or administrative injunction procedure to stop or prohibit breaches of key EU consumer laws exist in all Member States. According to the Injunctions Directive, an action for an injunction may be commenced by the "qualified entities" constituted according to national laws of the Member States, in particular consumer organisations and/or independent public bodies. The Member States may enable also business and business organisations to bring an injunction action. The purpose of this workshop is to discuss the practical use of the injunction procedure as a tool for the enforcement of EU consumer law, as well as possible measures at EU level that could improve its effectiveness.

As a cross-cutting question, the participants are invited to express their views on whether EU consumer and marketing law rules should be simplified and streamlined by bringing them into a single horizontal EU instrument / an EU "code".

Discussion within groups – 2 topics

A) TOPIC 1. INJUNCTION PROCEDURE - HOW TO IMPROVE ITS EFFECTIVENESS AS CONSUMER LAW ENFORCEMENT TOOL?

In several Member States the injunctions procedure is largely used at national level. Unfair contract terms, unfair commercial practices and in particular misleading advertising have been the illegal practices most frequently targeted by injunctions. However, the potential of the injunction procedure is not fully exploited across the EU due to a number of shortcomings. Among the most important are: the high costs linked to the injunctions proceedings, its length and the relatively limited effects of the rulings on injunctions. We would therefore like to explore, taking into account the existing national solutions, how to improve the use and the effectiveness of the injunction procedure across the EU.

Sample specific questions for the discussion

1. Should the accelerated procedure be always available within the injunction procedure for urgent cases?
2. Should the publication of the injunction decision be mandatory?
3. Should consumers be able to invoke the injunction decision when seeking action for damages?
4. Should consumer organisations be exempted from court/administrative fees when seeking injunction?

B) TOPIC 2. HOW TO ENCOURAGE THE USE OF THE INJUNCTION PROCEDURE FOR STOPPING CROSS-BORDER INFRINGEMENTS OF CONSUMER LAW?

The actual use of injunctions as a cross-border enforcement tool has been limited. Since the entry into force of the Consumer Protection Cooperation Regulation, most public bodies have opted to use its mutual assistance mechanisms when combating an illegal practice by a trader in another Member State. Consumer organisations are reluctant to seek injunctions abroad due to the cost and the perceived complexity of the procedure in other Member States. Consumer organisations tend to sue traders, even if established abroad, in their own jurisdictions. Sometimes consumer organisations from different Member States cooperate by seeking parallel injunction actions against the same illegal practice of several traders established in those Member States. In some Member States business organisations are also enabled to seek injunctions in another Member State where the infringement originated.

Sample specific questions for the discussion

1. Should measures be taken to increase awareness on the injunction procedure across the EU?
2. Should the cooperation between consumer organisations on injunctions be enhanced across the EU?
3. Should business organisations be enabled across EU to seek injunctions for the protection of collective consumers' interests both against national and cross-border infringements?

For more background information please consult the following links:

- The Injunctions Directive:
  http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434096329746&uri=CELEX:32009L0022
- European Commission website on the Injunctions Directive:
  http://ec.europa.eu/consumers/enforcement/injunctions/index_en.htm
- 2012 Second European Commission report on the application of the Injunctions Directive:
  http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434096245408&uri=CELEX:52012DC0635