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ANED Report: The Protection of Consumers with Disabilities in the European Union

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Perspective

- The report sees people with disabilities as active in the market and as exercising power through the market.

Structure

- Part I: Maps and reviews the protection provided to consumers with disabilities through EU law:
 - General consumer protection legislation
 - Legislation relating to Services of General Interest and Services of General Economic Interest
 - Other Internal Market Legislation
- Part II: Examines the situation in 9 EU MSs and associated countries, based on info. provided by ANED country reporters.
- Part III: Conclusions, reflections and recommendations.

UN CRPD (1)

- It is important to view protection of consumers with disabilities in light of the UN CRPD.
- The UN CRPD does not specifically refer to consumer protection, but does provide for:
 - the right to non-discrimination and equality, including the right to reasonable accommodation
 - the right to live independently and be included in the community
 - the right to participate in cultural life, recreation, leisure and sport

UN CRPD (2)

- Article 12: States Parties shall 'provide access by persons with disabilities to the support they may require in exercising their legal capacity'.
- A key principle reflected throughout the Convention is that persons with disabilities have the right to participate in society on an equal basis with others.

Consumer Protection and Accessibility

- European Commission will propose a European Accessibility Act next year.
- Consumer protection for consumers with disabilities is a key element of ensuring an accessible market – and it is also an area where the EU has a lot of powers.

EU Law: general consumer protection legislation (1)

- Main aim of this legislation is to establish common or harmonised standards throughout the EU, and thereby make it easier for companies to operate in an internal market.
- When setting these common rules, the EU legislator also aims to protect consumers.

EU Law: general consumer protection legislation (2)

- Instruments considered include:
 - The General Product Safety Directive (2001) – sets rules for product safety for consumer products
 - The Unfair Commercial Practices Directive (2005) – harmonised rules to counteract unfair commercial practices
 - The Consumer Rights Directive (2011) – harmonised rules for distance and off-premises contracts

EU Law: general consumer protection legislation (3)

- EU General Consumer Protection legislation more or less ignores the situation of consumers with disabilities.
- Protection is directed towards the so-called “average” consumer, who is expected to be reasonably well informed, observant and circumspect.

EU Law: general consumer protection legislation (4)

- EU general Consumer Protection legislation occasionally makes reference to the “particularly vulnerable” consumer.
- Vulnerability results from consumers’ “mental or physical infirmity, age or credulity”.
- EU general consumer protection legislation pays a lot of attention to providing consumers with information, but makes no reference to the need to provide information in disability accessible formats.

EU Law: general consumer protection legislation (4)

- New instruments in this field seem to have been adopted without taking the UN CRPD into account.
- Consumer Rights Directive refers to consumers who “are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity”.
- Proposal for a directive on alternative dispute resolution for consumer disputes makes no reference to the need to make dispute resolution available in disability accessible formats, and contains no general non-discrimination clause.

EU Law: Services of General Economic Interest (SGEIs) (1)

- These are economic services of general importance to everyone and indispensable for welfare.
Examples: gas and electricity supply, telecommunications, water supply, broadcasting.
- EU law allows Member States to set certain requirements on SGEIs to ensure that a quality service is available to all.
- On some occasions, EU law sets these rules or requirements directly.

EU Law: Services of General Economic Interest (2)

- These EU directives are less likely to refer to “vulnerable” consumers in general, but provide for more targeted and specific measures to protect consumers with disabilities.

EU Law: other internal market instruments

- One example: Medical Products Directive (2001) which requires medicine packaging to be labelled in Braille across the EU.

Review of Situation in Various European Countries

- Commonalities in terms of complying with EU legislation.
- General distinction between measures which empower people with disabilities as consumers and measures which are more protectionist in nature.
- Empowering measures: enable people with disabilities to operate in the consumer market without additional protection – but may involve making adaptations / accommodations.
- Protectionist measures: provide additional protection to people with disabilities as consumers.

Examples of measures which empower consumers (1)

- Spain: consumers are entitled to receive information in disability accessible formats under the Law on the Normative Adaptation to the International Convention on the Rights of Persons with Disabilities (Ley 26/2011).
- Spain: the National Consumer Institute undertakes outreach and provides training/ education to persons with disabilities, in cooperation with the Spanish DPOs.

Examples of measures which empower consumers (2)

- Denmark: as a result of action taken by the Consumer Ombudsman, two major banks have large numbers of ATMs which use speech synthesis.
- UK: consumer protection bodies, such as the Office of Fair Trading and the Citizens Advice Bureau, support consumer claims and complaints made by people with disabilities.

Examples of measures which empower consumers (3)

- Latvia and the UK: non-discrimination legislation explicitly prohibits discrimination on the ground of disability with regard to access to goods and services.
- Many countries offer free access to telephone directory enquiries services for those people with disabilities who are unable to use the standard sources of information.
- The provision of assistance and support when taking consumer decisions, such as the decision whether to enter into a long term contract or take out a loan.

Examples of protectionist measures (1)

- Protectionist measures can be appropriate or can be overly protective and stigmatising.
- Spain: some autonomous communities have legislation on consumer protection, which provide “special” treatment or priority to consumers who are in a situation of “inferiority”, “subordination”, “helplessness” or “vulnerability”. The list of people covered by these “special” measures usually included people with disabilities.

Examples of protectionist measures (2)

- Cyprus: adapted credit agreements for consumers with disabilities. This leads to reduced delays in payments and alteration to the repayment programmes to the advantage of borrowers with disabilities.
- Cyprus: people with disabilities can benefit from a number of measures with regard to telecommunication services, including no connection and no monthly subscription fee for a fixed telephone line, and free calls.

Examples of protectionist measures (3)

- Hungary: a disabled person who is dependent on certain equipment for the maintenance of life, can have an uninterruptible power supply installed with regard to that piece of equipment.
- In some countries, people with disabilities can receive gas and electricity at lower tariffs or prices than other consumers.
- In general, people who have been fully deprived of their legal capacity are denied the possibility to enter into any kind of contract on their own.

Questions for Reflection (1)

- What does protecting consumers with disabilities “on an equal basis with others” mean in practice?
- How can consumers with disabilities be empowered to take part in the market? Can you give any examples of good practice?
- How appropriate is it to label consumers with disabilities as “vulnerable” and to provide protection to them as “vulnerable” consumers?

Questions for Reflection (2)

- When will additional protection for consumers with disabilities be appropriate? Can you give any examples?
- When will additional protection for consumers with disabilities be overly paternalistic or stigmatising? Can you give any examples?