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**Concept Note**  
**Working Group on Vulnerable and Disadvantaged consumers**  
**IGE on Consumer Protection Law and Policy July 2018**

**Background**

In its Agreed conclusions (Par.12) the second session of the IGE on consumer protection requested "the UNCTAD secretariat, in accordance with the United Nations Guidelines for Consumer Protection, Item III, 4. **to convene a working group on "the protection of vulnerable and disadvantaged consumers to highlight best practices, to facilitate information exchange and consultations, and to continue the work from the second session, led and integrated by member States on a voluntary basis, without financial implications for the regular budget of the United Nations, and to report to the third session Intergovernmental Group of Experts";**

This concept note aims at setting the framework for the operations of the Working Group and its terms of reference.

Consumers often face imbalances in economic terms, educational levels and bargaining power. The said imbalances are a natural occurrence in a consumer-business relationship therefore justifying consumer protection initiatives. It is common knowledge that businesses are more powerful than consumers in a given market.

Thus, *vulnerability* is the concept which defines the relationship between consumer and business justifying the need for a specific protection action to consumers. Consumer vulnerability is then understood as a permanent or provisory situation, that may be individual or collective which causes imbalances the consumer/business relation<sup>1</sup>. It is a specific characteristic in which one of the parties is disadvantaged due to a lack of technical knowledge, resources or bargaining power.

**Purpose**

The purpose of this working group is to provide a forum for member States representatives and interested stakeholders to exchange experiences on how to better protect vulnerable and disadvantaged consumers considering the challenges faced by developing countries, low-income consumers and those with low or non-existent literacy levels in both rural and urban areas. The aim is to eventually come up with policy recommendations/guidance on issues highlighted in the Group's discussions, and a compilation of best practices to protect and inform vulnerable and disadvantaged consumers.

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<sup>1</sup> BENJAMIN, ANTONIO HERMAN. V Manual de direito do consumidor / Antonio Herman V. Benjamin, Claudia Lima Marques, Leonardo Roscoe Bessa – 5. ed.Ver.Atual.E ampl. – São Paulo : Editora Revista dos Tribunais, 2013.



### **Method of work**

The vulnerable and disadvantaged consumers working group will be chaired by an UNCTAD member State with long-standing experience in enforcing consumer protection law and shall hold regular teleconferences to agree on the roadmap to be followed and to discuss specific topics, which will be identified in advance.

The timeframe for the working group is from October 2017 to June 2018. The Secretariat will organize discussions and will carry out consultations with member States on the proposed topics for discussion. The Secretariat will inform all member States regarding the progress made by the Group. For this purpose, it is essential to establish a list of contact persons to be appointed by consumer protection agencies to participate in the work of the Group. The Secretariat may take advantage of the international and regional conferences and meetings, such as ICPEN conferences, to organize side meetings of the Working Group.

### **Outcomes**

The Group will come up an agreeable definition of vulnerable and disadvantaged consumers and identify priority issues for consumers and/or consumer protection agencies for discussion in the Group. The Group will eventually produce:

- An analysis of the challenges faced by developing countries on the protection of vulnerable and disadvantaged consumers.
- A compilation of best practices in the identified areas.
- An analysis of possible policy options for consumer protection agencies of developing countries.

### **The role of the Secretariat**

The UNCTAD Secretariat (Competition and Consumer Policies Branch) will take the lead in the establishment and organization of the work of the Group and will provide support to ensure a good quality and timely outcome.

Nevertheless, member States will play a key role in the discussions and in the formulation of the outcome of the Group. Therefore, the Secretariat expects active engagement of member States representatives and interested stakeholders in the discussions and meetings of the Working Group.

**Annex II shows preliminary tentative dates and deadlines for the work of the Group. As the Working Group decides**

### **References**

UN instruments

[A/RES/70/186 - Resolution on Consumer Protection](#)



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[United Nations Guidelines for Consumer Protection](#)

[UNCTAD Manual on Consumer Protection \(2016\)](#)

[UNCTAD Brasilcon Contribution to Second Session IGE on Consumer Protection on The protection of vulnerable and disadvantaged consumer \(2017\)](#)

[European Union](#)

[European Union Unfair Commercial Practices Directives, 2005](#), <https://www.ecgreece.gr/wp-content/uploads/2015/07/Dir-2005-29-en.pdf>

[OECD](#)

[OECD Consumer Policy Toolkit](#)

BENJAMIN, ANTONIO HERMAN. V Manual de direito do consumidor / Antonio Herman V. Benjamin, Claudia Lima Marques, Leonardo Roscoe Bessa – 5. ed.Ver.Atual.E ampl. – São Paulo: Editora Revista dos Tribunais, 2013.

CONSUMER VULNERABILITY ACROSS KEY MARKETS IN THE EUROPEAN UNION, Final report, European Commission  
[http://ec.europa.eu/consumers/consumer\\_evidence/market\\_studies/docs/vulnerable\\_consumers\\_approved\\_27\\_01\\_2016\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/vulnerable_consumers_approved_27_01_2016_en.pdf)

MIRAGEM, BRUNO. Curso de direito do consumidor / Bruno Miragem – 4 ed.rev., atual e ampl. – São Paulo : Editora Revista dos Tribunais, 2013.

UNDERSTANDING AND PROTECTING VULNERABLE FINANCIAL CONSUMERS, Peter Cartwright, J Consum Policy (2015), Published online: 13 December 2014, Springer Science+Business Media New York 2014.

UNDERSTANDING CONSUMER VULNERABILITY IN THE EU'S KEY MARKETS, European Commission, Directorate-General for Justice and Consumers, Věra Jourová, Commissioner for Justice, Consumers and Gender Equality; Factsheet, February 2016.



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## **Annex I: United Nations Guidelines for Consumer Protection: Vulnerable and Disadvantaged consumers**

### **DEFINITION**

Although there is no commonly adopted definition regarding consumer vulnerability<sup>2</sup>, according to generally accepted doctrine and experts<sup>3</sup>, consumer vulnerability is an *ex ante* assessment which can lead to a negative outcome in a consumer relation. The common *consumer - provider* relationship implies disparities related to bargaining power, technical knowledge and resources.

### **TYPES OF VULNERABILITY**

There are three types of vulnerability identified by the doctrine: technical vulnerability, material vulnerability and legal vulnerability.

Technical vulnerability concerns the lack of technical knowledge about the product or service. For example, telecommunications services or even the acquisition of a computer or a mobile phone.

Material vulnerability concerns the economic, physical or psychological insufficiency of the consumer *vis-à-vis* the provider.

Legal vulnerability refers to the lack of knowledge about the law, regulations and their impact on consumer relations.

### **IMPORTANCE**

Considering the development of several new types of products and services deriving from telecommunications and technological advances, consumers all over the world are obliged to deal with several new products and services, new commerce tools, e-commerce (mobile commerce), not to mention facilitated access to credit and financial services.

Very specific and technical services such as financial services are often the ones which increase consumer vulnerabilities.

### **UNGCP**

The United Guidelines for Consumer Protection establishes in its principles the benchmarks for good business practice for conducting online and off-line commercial activities with consumers with a special attention to vulnerable and disadvantaged consumers:

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<sup>2</sup>[http://ec.europa.eu/consumers/consumer\\_evidence/market\\_studies/docs/vulnerable\\_consumers\\_approved\\_2\\_7\\_01\\_2016\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/vulnerable_consumers_approved_2_7_01_2016_en.pdf) (29.01.2017)

<sup>3</sup><http://unctad.org/en/PublicationsLibrary/webditeclp2016d1.pdf> (28.01.2017)



*(a) Fair and equitable treatment*

*Businesses should deal fairly and honestly with consumers at all stages of their relationship, so that it is an integral part of the business culture. Businesses should avoid practices that harm consumers, particularly with respect to vulnerable and disadvantaged consumers.*

This principle is mentioned and referred to throughout the UNGCP:

*8. Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection*

*are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.*

*E. Distribution facilities for essential consumer goods and services 36. Member States should, where appropriate, consider:*

*(a) Adopting or maintaining policies to ensure the efficient distribution policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in (b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as providing information about them, especially in rural areas.*

*45. Member States should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas.*



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## Annex II: Proposed deadlines and dates for the work of the Group

<b>Tentative Dates</b>	<b>Remarks</b>
30 September 2017	Finalization of the list of contact persons from consumer protection agencies
02 October 2017	First conference call discussion on the topics for discussion, method of work of the WG and designation of a chair
02 December 2017	Second Conference devoted to the definition of vulnerable and disadvantaged consumers based on existing best practices
02 February 2018	Third conference-call devoted to the analysis of the challenges faced by developing countries on the protection of vulnerable and disadvantaged consumers
02 April 2018	Fourth Conference call devoted to the analysis and determination of possible policy options for consumer protection agencies of developing countries.
04 June 2018	Fifth Conference call devoted to the compilation of best practices to be presented during the Third session of the IGE on consumer Law and policy