

Third Ad Hoc Expert Meeting on Consumer Protection

Geneva, 22-23 January 2015

Contribution on:

**Report on Modalities for the revision of the United
Nations Guidelines for Consumer Protection**

by

Consumers International

The views expressed are those of the authors and do not necessarily reflect the views of
UNCTAD



Comments by Consumers International to UNCTAD in respect of the Report on Modalities for the revision of the United Nations Guidelines for Consumer Protection. January 2015

Consumers International is pleased to respond to the Modalities Report having contributed with comments on the First Draft. We note with satisfaction, that many of our comments made on the First Draft have been included, notably those that were related to our proposals for amending or adding new guidelines to the existing text of the UN Guidelines for Consumer Protection (UNGCP).

General comments on the Report

- a. We warmly welcome the commitment in para 3 to review *the 'legitimate needs'* (currently in GL 3) and in particular, the intention to review them *'both as a whole and individually'* and to identify *'policy or enforcement gaps and shortcomings'* including *'issues that are not yet addressed in the UNGCP today'*. We look forward to further discussion about this when it comes to the Draft Resolution. The *legitimate needs* are the most quoted passage of the UNGCP and deserve close attention and we have already made submissions regarding their improvement in our 2013 evidence to UNCTAD.
- b. We note that with the exceptions of Brazil, Chile, Hong Kong SAR, South Africa and Switzerland, the remaining member states did not reply to all of the questionnaires relating to the envisaged WGs. This raises questions regarding the weight to be attached to the overall pattern of responses (as opposed to individual responses which will of course bring valuable insights regarding specific instances of application of the UNGCP). This has a bearing on decisions concerning the scope of the revision, to which we return in para j) below.
- c. The Modalities report seems to exempt from consideration issues under negotiation at the OECD and other international organisations. Paragraph 10 states: *'the revision should not prejudice the ongoing consultations on the revision of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (hereafter OECD Guidelines) or the OECD/G-20 High Level Principles (HLPs) on financial services'*.
On a point of fact the HLPs of financial services were completed in 2011, and are now undergoing the 'effective approaches' which have also been drafted. So the HLPs themselves cannot be 'prejudiced'. More fundamentally our concern is that this approach could constitute a major narrowing of the revision and in effect subordinates the UN to other international organisations in these areas. CI is in favour of cross-referencing to the work of other international guidelines where appropriate and we have done that in our own 2013 proposals. But the position suggested in paragraph 10 seems much more restrictive than that and seems to aim to establish a general principle.
Such proposals are often justified in discussion by the argument that one should not 'reinvent the wheel'. Of course there is some truth in that which is why we favour cross-reference, where appropriate. But the UN contains far more members than either OECD or G20, for example, and this can lead to an incomplete picture. For example, issues pertaining to financial services that were raised by national delegations at the 2013

conference are not dealt with by the HLPs. We were assured by the chair of the Financial Services WG at the progress-report meeting in June 2014 in Geneva that those issues: bank deposit protection, remittances, responsible lending and mobile payments would be dealt with under this heading. (Mobile platforms are discussed under e-commerce).

- d. There is currently confusion around the definitions of 'cross-cutting issues' and 'thematic issues' set out in section D of the report. The text and the sub-title refer to a 'thematic approach' and an 'integrated approach' and when asked in the questionnaire, we supported the latter on grounds of practicality. However, the table in paragraph 15 divides topics between 'thematic issues' and 'cross-cutting issues' and we fail to understand the distinction between the two definitions, particularly as several fall into both categories. If other delegates share our confusion, this may cloud the revision process. Nevertheless, we think there is merit in the idea of high level principles feeding through to effective approaches as has been outlined by the secretariat in recent presentations to ICPEN and the OECD Committee on Consumer Policy .
- e. We welcome the positive nature of the report back on international cooperation and look forward to discussions around specific proposals.
- f. We must express our concerns about the extent of opposition expressed by the US, (and reproduced in footnotes) to inclusion of issues listed in the table in para 15. Going through the list there is none whose inclusion is clearly supported. In two cases, public services and tourism, there is qualified interest in discussion falling short of support for inclusion. While we acknowledge that the criticism regarding vagueness of definition is in places justified (eg cross-border trade) we are concerned that taken to its logical conclusion, if the rule of consensus is applied then there is no room for the majority of subjects listed on the table and that would leave the entire process adrift after a prolonged period of discussion has taken place – more than two years now. We would respectfully ask the WG chairs and our American colleagues to seek to avoid such an outcome. There is much rich detail in the US evidence on consumer protection in the USA that would be of great value in the context of the revised guidelines and would be a pity to lose the opportunity to use it.

E-commerce

- g. We are increasingly concerned about the separate treatment of e-commerce from digital goods and services. We do not make this observation in a critical sense, or rather we make it in a self-critical sense, as we have ourselves been slow to draw the two overlapping dimensions together. As we move to a stage where an ever increasing proportion of our interactions and transactions are mediated through online channels (the UK government now talks about public service delivery that is 'digital by default'), the term e-commerce starts to appear anachronistic - especially as providers across all markets migrate their offerings online and an increasing number of formerly offline devices and appliances come to require online connectivity, for example for control of domestic appliances at a distance through the internet (the so-called internet of things). In reality e-commerce is a sub-set of digital, while we have instead referred to digital as a sub-set of e-commerce in the discussions around the 2013 conference and after. The report and the survey, in contrast scarcely address digital products at all, most of the mentions coming in the form of foot notes based on member responses. We fear that the revision process will neglect the emergence of digital products (as distinct from e-commerce transactions) and will thus be overtaken by events. As digitisation becomes the 'new normal' the range of issues and potential detriments that consumers face go beyond those that arise in relation to e-commerce. There is still time to remedy this shortcoming.

Financial services

- h. The Report makes no reference to the main factor leading to the drafting of the OECD/G20 HLPs, namely the financial crisis, the succeeding global economic instability and the inadequacy of consumer protection measures in financial services. Instead it highlights the growth in access to financial services, which is, we agree, a major factor. However, without reference to the financial crisis the report is unbalanced. In this it reflects the absence of reference to the financial crisis in the HLP document to which it refers so heavily. The revision process should also make reference the G20 Principles for Innovative Financial Inclusion which are a response to the failure of many countries to facilitate access to financial services, particularly for the poor. We also commend the work of the World Bank on Good practice in Financial Consumer Protection which has been published in various versions during recent years.
- i. We welcome the brief mentions of remittances (para 57), mobile payments (also para 57) bank deposit guarantees (explicit mention in para 58 and implicit in para 56) but all of the above will require amplification; as they stand they read like a 'tick list'. We regret the absence of explicit mention of 'responsible lending' which was listed by the conference presidency in July 2013 as an issue to be pursued further. The reference to avoidance of 'consumer over-indebtedness' in para 51 is welcome as far as it goes but does not fully address the issue of responsible lending.

Other issues

- j. We discuss 'other issues' in our response to the Draft Resolution and there will doubtless be a great deal of debate in Geneva on this group of issues, so we do not elaborate at length here. We do however make observations about the methodology to arrive at the indices given in para 75. Firstly we strongly agree with the report where it cautions that: '*the ratings may only be considered indicative of expert's interests (and) may not be considered authoritative per se for the purpose of prioritizing the work of this Working Group*'. We also share the reservations expressed by the US in footnote 28 regarding quantitative calculations. Secondly we add that the differences between the indices are so slight in some cases as to be a very poor guide in any case to member preferences especially given the variation in intrinsic importance between the issues. Some issues are matters of life and death such as access to drinking water under 'public services' compared with say 'tourism'. The fact that tourism has a higher index than does public services should not be a reason for it to be more highly ranked in terms of inclusion in the scope of revision. We are therefore pleased to see that public utilities and energy are included in the DR and of course we will comment on their respective content in comments on that document.

International Cooperation

- k. We welcome the very positive tone of members' responses and look forward to discussing a way forward. We draw attention to what seems to us to be a false dilemma described in para 84 between: a UN Commission and an intergovernmental structure within UNCTAD. While CI has consistently favoured the establishment of a standing UN Commission on Consumer Protection, we have some difficulty in distinguishing between the two options as both would be housed within UNCTAD. The essential point for us is that the entity would have a standing secretariat and an autonomous and ongoing programme of work, with the content along the lines indicated in the DR. We are optimistic that agreement can be found on this issue.

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